PERTH AND KINROSS COUNCIL

Environment Committee

25 March 2015

Actions to Promote the Red Squirrel Population on Council Land

Executive Director (Environment)

This report outlines the outcome of the surveys undertaken to assess the populations of red and grey squirrels on Council managed land. It also recommends actions to promote and increase the red squirrel population in specific locations.

1. BACKGROUND / MAIN ISSUES

1.1 The issue relating to the protection of the red squirrel population was outlined in the report to the Environment Committee in November 2013 (Report No. 13/543 refers). It was agreed at that Committee to undertake a series of surveys on Council owned land across Perth and Kinross to establish the location of red and grey squirrel populations. The surveys are now complete and the findings are presented in this report, along with recommendations on appropriate measures to be taken to support red squirrel populations in particular locations.

1.2 A national programme, Saving Scotland's Red Squirrels (SSRS), is a project that has been running since 2009 with the aim to stop the decline of Scotland's Red Squirrel population, currently estimated at around 121,000. SSRS are working to prevent the further displacement of red squirrels by grey squirrels, through targeting grey squirrel control at locations where grey squirrels are spreading northwards from the Central Lowlands. This is being carried out by a combination of Project Officers, landowners and householders trapping grey squirrels to form a co-ordinated Red Squirrel Protection Network across all of Scotland. According to SSRS, Perth and Kinross Council land is strategically important to the success of halting the spread of grey squirrels north, into the Highlands. The project has built a network of participating estates across Perth and Kinross with over 60 estates now involved, including the Forestry Commission. The (PKRSG) Perth & Kinross Red Squirrel Group which has been in existence since 1994 is now affiliated to the SSRS. It is a group of likeminded individuals who want to see red squirrels return to being the dominant species in Perth & Kinross. PKRSG are active in promoting themselves and their aims on social media and at public events such as the Kilt Run and the Scottish Game Fair.

1.3 The Scottish National Heritage (SNH) publication "Strategic Priorities for Red Squirrel Conservation in Scotland" (January 2004) includes proposed Red Squirrel stronghold sites and Priority Areas for grey squirrel control. This aims to eliminate any populations of grey squirrels north of a line that follows the Highland Boundary Fault from St Fillans in the west, to Hill of Alyth in the east, of Perth and Kinross.

1.4 The above SNH document states that grey squirrel control should ideally be employed in conjunction with the management of red squirrel strongholds. This should be the priority in order to maintain viable core populations of red squirrels as a basis for their widespread conservation. SNH have identified only one red squirrel stronghold in Perth and Kinross at south Loch Rannoch, and two priority areas for grey squirrel control around Loch Earn, west of St Fillans, and an area north of Dunkeld and Bridge of Cally, stretching north as far as Calvine and west to Kenmore.

1.5 A large number of estates and landowners are already actively working with both SSRS and Perth and Kinross Red Squirrel Group (PKRSG) to support red squirrel populations in Perth & Kinross. These groups have suggested that, without the support of Perth and Kinross Council, their work to remove grey squirrels would be less effective, as grey squirrels on Council land could continue to breed and undermine efforts on the other estates.

1.6 In order to establish the current squirrel populations on land controlled by Perth and Kinross Council, surveys were undertaken (as recommended in Report No. 13/543). The process and results are set out below.

1.7 A total of 34 feeders for use on 13 sites were provided by SSRS, through funding from the Tayside Biodiversity Partnership. The remaining 17 feeders were supplied by PKRSG. The sites and number of feeders were chosen in consultation with SSRS on the basis of their experience of grey squirrel trapping elsewhere and the potential population of grey squirrels in the vicinity of the sites. The feeders were placed on trees and filled with peanuts by volunteers from PKRSG who monitored the feeders on a minimum of 3 visits over the summer of 2014. Pads of adhesive tape were fixed to the lids of the feeders so that any animal accessing the food would leave a hair sample behind. These hair samples were then sent to SSRS for analysis and the results are reproduced in the Table 1 below.

Table 1

Site Name	AREA (ha)	Number of Feeders	Number of Visits (total)	Red Squirrels samples present	Grey Squirrels samples present
Den of Alyth	20.37	3	9	4	0
Keithbank Mill, Blairgowrie	1.06	2	6	2	0
Cuttleburn Den, Blairgowrie	0.06	4	14	10	0
Knock of Crieff	24.47	4	12	6	6
MacRosty Park, Crieff	10.37	4	3	0	0
Hilton Hill Callarfountain, Perth	12.00	4	12	1	10
St Magdalene's Hill, Perth	32.35	5	15	1	7

Site Name	AREA (ha)	Number of Feeders	Number of Visits (total)	Red Squirrels samples present	Grey Squirrels samples present
Kinnoull Hill Woodland (east), Perth	53.34	6	2	2	3
Kinnoull Hill Woodland (Barnhill), Perth	19.64	4	2	0	0
Kinnoull Hill Woodland park Corsiehill, Perth	3.21	4	12	4	4
Westfield Wood & path, Luncarty	3.44	4	12	0	0
Abernethy Glen walk	1.34	3	9	0	0
Scone Park	4.84	4	12	1	1

1.8 Only six of the thirteen locations surveyed were found to have grey squirrel populations, and these sites were in and around Perth and Crieff. Other sites in Blairgowrie and Alyth were found to have healthy and sustainable populations of red squirrels. These results are not entirely unexpected as the red squirrel populations are generally stronger further north. There are also a number of land managers in these areas proactively working to prevent the spread of grey squirrels northwards. Perth and Crieff would, however, appear to be conduits for grey squirrels from the south, and land managers in these areas, including the Council, could be in a position to help control the speed of their spread.

1.9 While there is no legal requirement for the Council to control grey squirrels at present, the red squirrel is a priority species in the UK Biodiversity Action Plan. By controlling greys, the Council would be furthering the conservation of biodiversity as set out in the Nature Conservation (Scotland) Act 2004, (Appendix 1). This would comply with the Code of Practice on Non-Native Species, introduced under Section 14C of the Wildlife and Countryside Act 1981, which provides guidance on preventing the spread of Invasive Non-Native Species (Appendix 2). It would also be consistent with the Scottish Government's internationally recognised three stage hierarchical approach to non-native species; Prevention, Rapid Response (Eradication) and Control and Containment. This approach would be welcomed by the PKRSG who are very keen to see the Council take action to help increase the red squirrel population across Perth and Kinross.

1.10 SSRS advice is that most landowners and estates in Perth and Kinross are currently tackling grey squirrels on their land, and that grey squirrels are able to survive in these areas, only because they have access to land where they are not being controlled.

2. PROPOSALS

2.1 As a result of the squirrel survey, the Council now has an opportunity to consider whether to control grey squirrels in the areas that have been identified with a grey squirrel population.

2.2 If controlling grey squirrels was deemed appropriate, 27 traps would be needed on affected Council sites. These would be include The Knock of Crieff, Scone Park and the sites in Perth as outlined in Table 2.

Table 2

Site Name	AREA (ha)	Proposed Number of traps	Proposed funding (based on SDRP grant of £185 per trap)
Knock of Crieff	24.47	4	£740
Hilton Hill Callarfountain, Perth	12.00	4	£740
St Magdalenes hill, Perth	32.35	5	£925
Kinnoull Hill woodland east, Perth	53.34	6	£1,110
Kinnoull Hill woodland park Corsiehill, Perth	3.21	4	£740
Scone park	4.84	4	£740

2.3 The traps would need to be inspected twice daily and any grey squirrels found in them would need to be taken from the public open space to a convenient area of private ground for humane disposal. The Council would not undertake this lightly and, would need to, work with PKRSG and SSRS to ensure that the reason for undertaking it, to support the native red squirrel, was fully explained and justified. The trap locations and activities associated with them would need to be undertaken discretely and fully in accordance with the Grey Squirrel Trapping Guidelines (http://www.rsne.org.uk/sites/default/files/Grey%20Squirrel%20Trapping%20Guidelines.pdf). These seek to minimise any suffering or distress to the wild animal. Any animals other than grey squirrels found in the traps would be released immediately.

2.4 The options that have been considered for grey squirrel control on the sites identified as having a large population are:

a) Employ a pest control contractor
b) Engage volunteers from PKRSG
c) Employ a specialist member of staff
d) Continue to monitor red/grey squirrel populations

Option (a) – Pest control contractor

2.5 In this option, the Council would employ a pest control contractor for a period of 5 years to trap and remove grey squirrels in accordance with the Grey Squirrel Trapping Guidelines. This would involve 5 trapping sessions per annum, each session being for 7 days on 6 sites over the spring and summer seasons, from March to August, when the availability of natural food sources are reduced. This would take approximately 1 to 1.5 hours per site visit including an allowance for travel, which for two visits per day would take 420 hours per annum per site. Based on rates obtained from the Tayside Procurement Consortium, it has been estimated that this could cost up to £22,050 per annum.

2.6 The level of Scottish Rural Development Programme (SRDP) grant payable for this option would be £4,995 per annum based on their rate of £185 per trap. This rate is probably more suited to estates that already have directly employed staff to undertake these sorts of land management activities. As the level of grant available is significantly less than the cost, this option is not financially viable at present.

Option (b) – Engage volunteers

2.7 In this option, the Council would enter into an Agreement to allow PKRSG to trap, remove from Council land and dispatch grey squirrels, to the same extent as detailed in section 2.2. However PKRSG have indicated that it would be too onerous to expect volunteers to reliably undertake the significant number of visits to the various sites, particularly for the full 5 years that the programme would receive SRDP support. The Council would also have to invest resources to regularly monitor the volunteer activities to ensure these are carried out appropriately. There would be a risk that if procedures are not properly followed and the programme had to be stopped prematurely, then PKRSG and the Council would be open to criticism. Therefore, this option is rejected.

Option (c) – Employ a specialist member of staff

2.8 Employing existing members of staff to trap and remove grey squirrels. As staff resources are already fully committed on current work programmes and duties, a new post would need to be created to undertake this work. There would also need to be full cover for holidays and absences to ensure the daily check of traps was undertaken. Whilst the SRDP grant £4,995 per annum would also be available for this option, it would not be sufficient to cover the costs and the sporadic nature of the work, level of training required and logistical issues would make it unsustainable. There is no budget for this activity, therefore this option is rejected.

Option (d) - Continue to monitor red/grey squirrel populations

This option would not control grey squirrel populations on Council managed land. However, there would be no legal consequences of non-control, it would avoid any additional costs and it would avoid potential adverse reaction from some sectors of the community about grey squirrel control. The Council would still continue to manage habitats for the benefit of red squirrels through implementation of the Council's Forest Plan. Volunteers could also continue to monitor squirrel populations on these sites using the feeders. Non-control would, however, not be as effective in trying to prevent the spread of grey squirrels north of the highland boundary fault.

2.9 The options appraisal shows that the control of grey squirrels would need to be undertaken by a professional pest control contractor, using proper methods to avoid any suffering or distress to wild animals. This together with proactive information and advice could address some public concerns, although it is recognised this is always likely to be a controversial issue.

2.10 Whilst PKRSS had previously indicated that grey squirrel control could be done at no cost to the Council, the available SRDP funding is insufficient to cover the costs of employing a professional pest control contractor. As such, there would be a significant additional financial commitment required from the Council to undertake this programme over the 5 year period which is currently unfunded.

2.11 It is also recognised that controlling any wild animals can be an emotive issue for some members of the public and that any programme of animal control is likely to be controversial, and a source of objection from some sectors of the community. There is also a body of argument put forward by some academics which suggests that the control of grey squirrels will do little to conserve red squirrel numbers.

2.12 Therefore at this stage, due to the cost and uncertainty over the public reaction, it is recommended that the Council continue to encourage wider habitat management, where appropriate, to support red squirrel populations. This proposal would not control grey squirrel populations on Council managed land, but would:

- avoid any additional costs
- avoid potential adverse reaction from some sectors of the community, and
- there would be no legal consequences of non-control.

2.13 This approach can be undertaken through implementation of the Council's Forest Plan with volunteers continuing to monitor squirrel populations on these sites using the feeders, should they wish to do so.

2.14 If the Council chooses to embark on control measures in the future, based on the outcomes of this consultation exercise, proactive communication with the public would be necessary to explain the need for such action along with information about how it would be undertaken.

3. CONCLUSION AND RECOMMENDATIONS

3.1 The Council has been asked by PKRSS to support the control of grey squirrels on land it manages and in so doing, encourage the reintroduction of native red squirrels to parks and open spaces. They indicated that this could be done at no cost to the Council, however there is insufficient funding to cover the costs of employing a professional pest control contractor over the recommended 5 year programme.

3.2 However, it is recognised that the control of grey squirrels on Council owned land is not just a decision based on cost, but needs to take account of the interests and potential concerns of our communities. Therefore should a decision be made to employ an extermination contractor, a consultation exercise would need be undertaken with local Community Councils and 'Friends of Parks Group' prior to proceeding.

3.3 In the meantime, the Council have already indicated it will continue managing habitats for the benefit of red squirrels on all appropriate sites through the Forest Plan. In addition, the Council would welcome volunteers continuing to monitor the squirrel populations on the sites it manages, should they wish to do so.

3.4 It is recommended that the Committee approve:

(a) The continued monitoring of squirrel populations on Council land through volunteers (option d), and
(b) Management of the habitats to encourage red squirrels to colonise them naturally, and discourage grey squirrels by reducing the extent of their preferred habitats through the Forest Plan.
(c) Undertake a consultation exercise with local Community Councils and 'Friends of Parks' group in the event that a decision is made in future to control grey squirrels.

Author(s)

Name	Designation	Contact Details
David Williamson Andy Clegg	Biodiversity Officer Community Greenspace Team Leader	Phone 75278 Email dwilliamson@pkc.gov.uk Phone 75276 Email aclegg@pkc.gov.uk

Approved

Name	Designation	Date
Jim Valentine	Executive Director (Environment)	16 March 2015

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ANNEX

1. IMPLICATIONS, ASSESSMENTS, CONSULTATION AND COMMUNICATION

Strategic Implications	**Yes / None**
Community Plan / Single Outcome Agreement	**Yes**
Corporate Plan	**Yes**
Resource Implications	
Financial	**None**
Workforce	**None**
Asset Management (land, property, IST)	**Yes**
Assessments	
Equality Impact Assessment	**None**
Strategic Environmental Assessment	**None**
Sustainability (community, economic, environmental)	**Yes**
Legal and Governance	**None**
Risk	**Yes**
Consultation	
Internal	**Yes**
External	**Yes**
Communication	
Communications Plan	**Yes**

1. Strategic Implications

Community Plan / Single Outcome Agreement

1.1 In terms of "Creating a Safe and Sustainable Place for Future Generations" this proposal aims to provide an enhanced and protected natural environment.

Corporate Plan

1.2 The Council's Corporate Plan 2013 – 2018 lays out five outcome focussed strategic objectives which provide clear strategic direction, inform decisions at a corporate and service level and shape resources allocation. They are as follows:

i) Giving every child the best start in life;
ii) Developing educated, responsible and informed citizens;
iii) Promoting a prosperous, inclusive and sustainable economy;
iv) Supporting people to lead independent, healthy and active lives; and
v) Creating a safe and sustainable place for future generations.

2. Resource Implications

Financial

2.1 As funding will be sourced externally there are no financial implications arising from this report.

Workforce

2.2 The proposals in this report have minor workforce issues arising from grant funding applications and monitoring and procurement and contract administration. These activities would need to be undertaken within existing staff resources.

Asset Management (land, property, IT)

2.3 The proposals in the report will take place on land under the control of the Council. The Head of Legal Services have been consulted, and have indicated agreement with the proposals.

3. Assessments

Equality Impact Assessment

3.1 Under the Equality Act 2010, the Council is required to eliminate discrimination, advance equality of opportunity, and foster good relations between equality groups. Carrying out Equality Impact Assessments for plans and policies allows the Council to demonstrate that it is meeting these duties.

3.2 This section should reflect that the proposals have been considered under the Corporate Equalities Impact Assessment process (EqIA) with the following outcome:

(i) Assessed as **not relevant** for the purposes of

EqIA Strategic Environmental Assessment

3.3 The Environmental Assessment (Scotland) Act 2005 places a duty on the Council to identify and assess the environmental consequences of its proposals. The proposals have been considered under the Act and no further action is required as it does not qualify as a PPS as defined by the Act and is therefore exempt.

Sustainability

3.4 Under the provisions of the Local Government in Scotland Act 2003 the Council has to discharge its duties in a way which contributes to the achievement of sustainable development. In terms of the Climate Change Act, the Council has a general duty to demonstrate its commitment to sustainability and the community, environmental and economic impacts of its actions.

3.5 The proposals have been assessed in terms of the requirements to manage the Council's Greenspace assets long term in a sustainable way.

Legal and Governance

3.6 The Head of Finance, the Head of Legal Services and the Head of Planning and Regeneration have been consulted on the report.

Risk

3.7 There is a risk that members of the public could witness distressed animals in traps if the approved guidelines are not followed. These risks will be eliminated by employing experienced contractors to undertake the proposals. The Council is able to support the proposals as there is a requirement under the Nature Conservation (Scotland) Act 2004 and the UK Biodiversity Action Plan to protect Red Squirrels, and the Wildlife and Natural Environment (Scotland) Act 2011 to stop the spread of Invasive Non-native Species.

4. Consultation

Internal

4.1 Head of Finance, the Head of Legal Services and the Head of Planning and Regeneration have been consulted in the preparation of this report.

External

4.2 Saving Scotland's Red Squirrels and the Perth and Kinross Red Squirrel Group have been consulted during the preparation of this report.

5. Communication

5.1 Saving Scotland's Red Squirrels, Perth and Kinross Red Squirrel Group and the Council will be involved in publicising the recommendations in the report.

2. BACKGROUND PAPERS

Report to the Environment Committee on 20 November 2013, Report Number (13/543) reports on the proposal to undertake surveys.

3. APPENDICES

Appendix 1 - Extract from Nature Conservation (Scotland) Act 2004
Appendix 2 – Extract from the Code of Practice of Non Native Species

Appendix 1

Extracts from Nature Conservation (Scotland) Act 2004

http://www.legislation.gov.uk/asp/2004/6/pdfs/asp_20040006_en.pdf

An Act of the Scottish Parliament to make provision in relation to the conservation of biodiversity; to make further provision in relation to the conservation and enhancement of Scotland's natural features; to amend the law relating to the protection of certain birds, animals and plants; and for connected purposes.

PART 1
BIODIVERSITY

1 Duty to further the conservation of biodiversity

(1) It is the duty of every public body and office-holder, in exercising any functions, to further the conservation of biodiversity so far as is consistent with the proper exercise of those functions.

(2) In complying with the duty imposed by subsection (1) a body or office-holder must have regard to—

(a) any strategy designated under section 2(1), and
(b) the United Nations Environmental Programme Convention on Biological Diversity of 5 June 1992 as amended from time to time (or any United Nations Convention replacing that Convention).

Appendix 2

Extract from the Code of Practice on Non-Native Species

http://www.scotland.gov.uk/Resource/0039/00398608.pdf

The need to control non-native species

2.1 This Chapter explains why we need to be concerned about non-native animals and plants, and describes your responsibilities in relation to non-native species.

2.2 Non-native species are plants and animals which have found their way to a new habitat through human activity. Many non-native species have been carefully managed and these contribute positively to our lives, for example as livestock, crops, timber, garden plants or pets.

2.3 Some non-native species have been deliberately or accidentally introduced to Scotland, from locations across the world. In other cases, species native to parts of Scotland have been moved to locations where they did not previously occur. These species are also non-native in their new locations. Although many of these have become established in small numbers and do not currently pose a threat, a small number are invasive.

2.4 In certain regulated circumstances[13] former natives may be reintroduced however, in many cases the environment into which the species is being reintroduced has changed since its extinction. These changes require reintroductions to be carefully planned and their impacts on the natural environment, land use and people to be considered and monitored. The Scottish Government follows the International Union for Conservation of Nature (IUCN) Guidelines for Re-introductions http://www.iucnsscrsg.org/policy guidelines.html. No-one is permitted to reintroduce former native species without the relevant authority.

2.5 Uncontrolled, these non-native and former native species can:

- damage or displace native species
- disrupt ecosystems
- spread diseases which affect native species
- interfere with our rivers, leading to increased flooding
- cause damage to buildings and infrastructure
- pose human health risks.

[13] Former natives may be released under licences issued under section 16 of the 1981 Act.

2.6 Non-native species sometimes expand rapidly because they have advantages over our native species - they might be more adaptable than, able to breed faster than or able to outcompete our native species. When they arrive in a new country, they have left behind the predators, parasites, diseases or competition that keep their numbers under control in their original location. Non-native species may only become a serious problem some time after their introduction. It is not always possible to predict which non-native species are invasive, which is why it is important that we maintain the principle of preventing the introduction of all new non-native species.

2.7 Controlling invasive non-native species once they become widespread is frequently very expensive. The most cost-effective way of dealing with the problems created by non-native species is to prevent these plants and animals from becoming established in the first place. If they have just become established, the need is to rapidly control or remove them before they become a widespread problem.

2.8 The 2010 report The Economic Cost of Invasive Non-Native Species on Great Britain[14] provides five case studies to illustrate how the cost of eradicating invasive non-native species increases considerably with the length of time that a species has been established in the country. For example, the early eradication costs of creeping water primrose (*Ludwigia peploides*) which is currently established at 13 locations are estimated to be £73,000, whilst if it spread to a suitable habitat it is estimated that it could cost almost £242 million.

Managing the threat posed by non-native species

2.9 The Scottish Government's approach to non-native species is guided by the internationally recognised three stage hierarchical approach, the key principles of which are:

Prevention – preventing the release of all non-native species (both known invasive or otherwise) into the wider environment should be given the highest priority as the most effective and least environmentally damaging intervention.

Rapid response (eradication) – where prevention fails, early eradication or removal from the environment should be the preferred response.

Control and containment – once a species has become widely established, full-scale eradication is only possible or cost effective in a minority of cases. However, if non-native species are having serious negative impacts then it may be desirable to control or contain the population, or mitigate those impacts.

2.10 This approach is supported by provisions in the 1981 Act which place responsibilities on individuals and organisations regarding how they control and manage non-native species. The legislation also enables certain organisations to require the taking of emergency and other control measures for non-native species (see Chapter 9). Other legislation that is not covered by this Code may also support the three stage hierarchical approach (see the Annex for other relevant legislation).

[14] http://bit.ly/GBCostNNS

2.11 Preventing the release of all non-native animals, and the planting of any non- native plants in the wild is critical to a successful policy on invasive non- native species. This is because it is not always possible to predict with certainty which species are invasive and because small populations of non- native plants and animals may be present for many years before 'taking off'. For example, Japanese knotweed was in this "lag phase" for nearly 100 years, as demonstrated by the graph in figure 1.

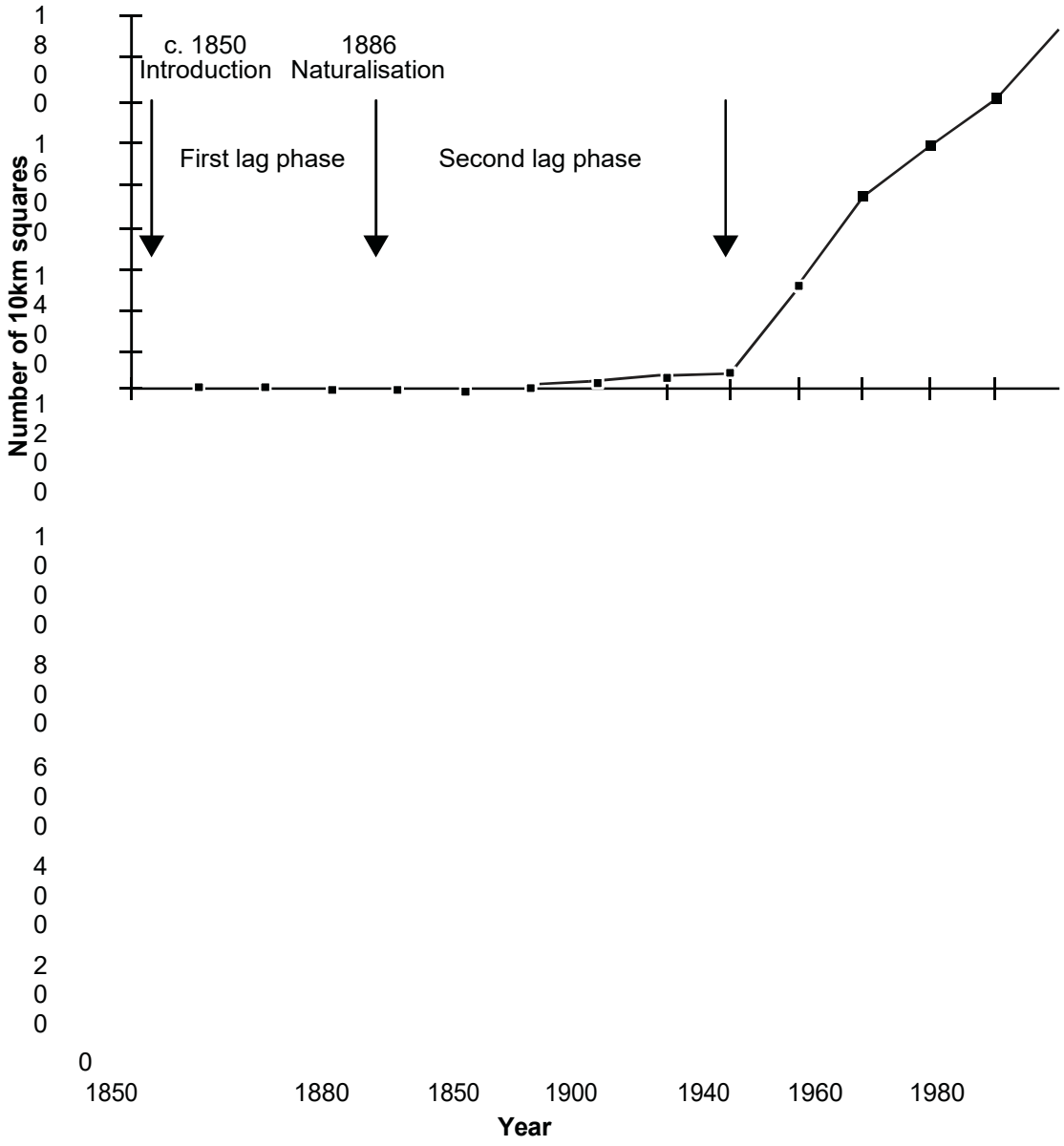

Figure 1: The Lag Phase of Japanese knotweed from, Child, L. and Wade, M. 2000. The Japanese Knotweed Manual. Packard Publishing Limited, Chichester.

2.12 Many non-native plants and animals that are currently established at low population levels may still be in their lag phase.

2.13 Because of the issues outlined above and the practical difficulties and costs associated with controlling invasive non-native species once they are established, preventing establishment is given the highest priority.

2.14 Preventing the introduction of non-native species is preferable to waiting to see if they are invasive, which leads to expensive control programmes designed to mitigate their damaging impacts. This is the approach advocated though the Convention on Biological Diversity and promoted through the Invasive Non-Native Species Framework Strategy for Great Britain.

2.15 Some habitats or locations are especially vulnerable to the introduction of non-native species. Severe impacts of non-native species on native biodiversity have occurred on remote islands where the native flora and fauna is less diverse, more isolated and therefore more susceptible to invasion. Other especially vulnerable habitats can, for example, include those found in marine, freshwater, riparian and woodland environments. Extra vigilance and caution should be exercised in and around these habitats.

2.16 Climate change is likely to have a significant impact on biodiversity in future years. It may enable more non-native species to establish and some that currently appear benign to become invasive.

2.17 It is likely that as the climate changes, the 'climate space' – the area which is climatically suitable – for each species or habitat will move (usually northwards or to higher altitudes in response to warming). In fact there is already some evidence of animals now occurring outside their former range (such as butterflies and marine molluscs).

2.18 However, these issues are very complex and it is not certain exactly how the climate will change, what its impacts will be on 'climate space' and how species will respond.

2.19 As the climate changes, some plants and animals may not be able to migrate successfully to new climate space and would require active intervention to translocate them to new areas to ensure their survival and the survival of the habitats and ecosystems of which they are a part. Non-native species legislation provides the necessary flexibility to regulate appropriate interventions of this type. If translocation does prove necessary it would be carried out under licence[15].

[15] See sections 16 and 16A of the 1981 Act.

The legal position and due diligence

2.20 This Code outlines the law relating to native and non-native species, including former native species and invasive non-native species. The principal legislation is the Wildlife and Countryside Act 1981. More recent legislation, including the Wildlife and Natural Environment (Scotland) Act 2011, has amended the 1981 Act. The 1981 Act now contains sections on the release or planting of all non-native species and the keeping, sale and notification of invasive species, in addition to provisions on Species Control Agreements and Species Control Orders. The Chapters that follow in this Code explain the main provisions set out in the 1981 Act.

2.21 It is important to note that the release or planting, keeping and sale offences in the 1981 Act are strict liability offences. This means that the prosecution does not need to prove any intention, knowledge, recklessness or negligence on the part of the accused. It is enough for the prosecution to prove that the offence took place – so if you are in any doubt regarding whether an animal or plant is native, don't release or plant.

2.22 However, a person accused of a release, planting or keeping offence may successfully establish a defence if they can show that they took all reasonable steps and exercised all due diligence to avoid committing the offence. This due diligence defence is designed to recognise efforts made by people to comply with the legislation. Ultimately it is always a matter for the Court to determine whether the defence of due diligence has been established. This will depend on the circumstances of each particular case but compliance or non-compliance with the Code could be used as evidence in a criminal prosecution.

2.23 This Code of Practice outlines the law and, where appropriate, gives practical guidance on what reasonable steps might be taken, and how due diligence may be exercised, in relation to the release, planting or keeping offences. Exercising due diligence is likely to involve assessing the risk of an offence happening, establishing what precautions to take to avoid the offence happening and regularly reviewing the risk, the precautions and their suitability. Doing nothing is unlikely to protect an accused; positive action is likely to be required. The type and extent of action required to satisfy the Courts will vary from case to case depending on the individual relevant circumstances.

2.24 The Code also outlines behaviour which is considered to be best practice and which may help to prevent an offence happening. Not abiding by best practice will not in itself be an offence but evidence of a failure to abide by best practice outlined in the Code could be used as evidence in a criminal prosecution.

Your responsibilities

2.25 The Code outlines the law, but it is important to note that independent legal advice should be taken as needed. In practice, though, acting reasonably and responsibly is prudent. This involves:

Adopting a precautionary approach: If you are in any doubt that your intended actions might lead to the release or planting of a non-native species then you should take the precautionary approach; don't release or plant until you have a clear understanding of the situation.

Carrying out risk assessments: Due diligence is likely to include assessing the risk of an offence happening, establishing what to do to avoid it happening and acting according to best practice to prevent it happening. Further advice and information, including identification guides, can be found at the GB Non- Native Species Secretariat website: www.nonnativespecies.org.

Seeking advice and following good practice: You should seek advice from an expert if you are unsure about any issues relating to the release or planting, keeping, sale or notification of non-native plants and animals. This may be particularly important in establishing what the native range is of a particular plant or animal. A list of suggested contacts is provided in Chapter 10. More information about the 1981 Act and other issues relating to non-native species can be found at: www.scotland.gov.uk/nonnativespecies. This Code contains some good practice guidance and this is designed to help you to take reasonable steps and exercise due diligence.

Reporting the presence of non-native species: The cost of removing or controlling a well-established invasive non-native plant or animal can be very high. Reporting the presence of a non-native plant or animal can help the relevant organisation (see Chapter 10) to take earlier and more decisive action.