

# Consultation on the draft Code of Practice on Non-Native and Invasive Non-Native Species



## RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

### 1. Name/Organisation

Organisation Name

UK Environmental Law Association

Title Mr  Ms  Mrs  Miss  Dr  **Prof.** *Please tick as appropriate*

Surname

Reid

Forename

Colin

### 2. Postal Address

School of Law

University of Dundee

Dundee

Postcode DD1 4HN

Phone **01382 384637**

Email

c.t.reid@dundee.ac.uk

### 3. Permissions - I am responding as...

**Individual**

/

**Group/Organisation**

*Please tick as appropriate*

**(a)** Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

*Please tick as appropriate*  Yes  No

**(b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

*Please tick ONE of the following boxes*

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

**(c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

*Please tick as appropriate*  Yes  No

**(d)** We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

*Please tick as appropriate*  Yes  No

## CONSULTATION QUESTIONS

1a) Does the Code provide helpful practical guidance on the steps that you should be taking to avoid committing offences under non-native species legislation in the Wildlife and Countryside Act 1981?

Yes  No

1b) Are there any chapters where you would like to see more detail provided?

See general comments below

2a) Does the Code provide clear guidance on the interpretation of “native range” in Chapter 3?

Yes  No

2b) Do you have any further comments on native range in Chapter 3?

See general comments below

3a) Does table 1 (on page 15) clearly set out the circumstances in which a type of animal is considered to remain in captivity or under the control of a person?

Yes  No

3b) In your view is there anything missing from this table or anything that should not be included?

See general comments below

4a) Does table 2 (on page 20) clearly set out the circumstances in which a type of plant is not considered to be growing in the wild?

Yes  No

4b) In your view is there anything missing from this table or anything that should not be included?

See general comments below

5a) Do you agree with the proposal that roadside verges are wild unless they are in a built-up area?

Yes  No

5b) If not, what alternative do you propose?

See general comments below

6a) Do you think that the framework of responsibilities for the key government agencies in relation to non-native species are set out clearly in Chapter 10?

Yes  No

6b) Do you have any further comments on the framework proposed in Chapter 10?

See general comments below

7. Please provide any other comments that you would like to make about any aspect of the Code of practice on non-native and invasive non-native species.

See below

## **Consultation on the Draft Code of Practice on Non-Native and Invasive Non-Native Species**

UKELA is the UK's foremost membership organisation working to improve understanding and awareness of environmental law, and to make the law work for a better environment. As such, UKELA has a keen interest in ensuring the effectiveness of the legal framework to securing nature conservation. This response has been prepared by the Scottish Law working party of UKELA, in consultation with the Nature Conservation working party.

We wish to make three general points.

1. The Code still leaves lots of grey areas. If one takes the example of plants, travelling around the county in spring and seeing all the locations where (non-native) daffodils and other spring bulbs are growing reveals the many difficult definitional decisions that may have to be taken. Trying to apply the Code does not take one much further forward. For example, there will plenty of doubt over the guidance that the planting of non-native species will be lawful in "roadside verges in a built-up area" (where is the boundary of a built-up area in a rural village?) and where the boundary is to be set of "amenity greenspace – landscaped areas providing visual amenity or separating different buildings or land uses for environmental, visual or safety reasons" if either there is no boundary fence or a gradual transition from managed to "natural" land?

2. The Code does not by itself offer much practical guidance on techniques to avoid the spread of particular species - the guidance on marine and aquatic species is particularly thin. Is it intended that there will be more detailed and specific guidance published in due course and will this form part of the statutory Code?

3. The distinctions drawn in the guidance do not all seem to be based on the mischief that the Act is aimed against (viz. the likelihood of non-native species spreading). For example the exclusion from "the wild" of some roadside verges and amenity greenspace (p.18) does not sit easily with the concern over such areas as stepping-stones to the wild (p.20). If a case comes to court, there may be a mismatch between seeking to give effect to the aims of the Act, implementing the policy behind it, and having regard to the content of the Code.

Prof. Colin T. Reid,  
Professor of Environmental Law  
University of Dundee,  
Dundee DD1 4HN

[c.t.reid@dundee.ac.uk](mailto:c.t.reid@dundee.ac.uk)