

Japanese Knotweed - Client Guide

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Criminal offences?

It is not a criminal offence to have the plant growing on your land. However, under the Wildlife & Countryside Act 1981 it is an offence to plant or 'cause to grow' certain plants, including Japanese Knotweed, 'in the wild'. Fines can be up to £5,000, and up to 2 years imprisonment. However, it is a defence to prove that all reasonable steps were taken to prevent this.

DEFRA expect landowners to take reasonable measures to confine the plants within your property so as to prevent them spreading to the wider environment beyond the owner or occupier's control.

Negligent or reckless behaviour (such as inappropriate disposal of garden waste) that results in an invasive species becoming established in the wild would constitute an offence.

Enforcement Powers

The Infrastructure Act 2015 allows environmental authorities to agree Species Control Agreements ('SCAs') with landowners, under which the owner will agree to take steps to control invasive species. If the owner breaches the agreement, then a Species Control Order ('SCO') can be made, compelling the owner to control the species. Breach of the SCO carries up to 51 weeks in jail and/or an unlimited fine.

Local authorities can also use their existing powers, under s.215 Town & Country Planning Act 1990 and the Anti-Social Behaviour, Crime and Policing Act 2014, to require the removal or control of invasive species such as knotweed.



What are 'Invasive Plant Species'?

Japanese knotweed, giant hogweed, Himalayan balsam, Rhododendrons, New Zealand pygmyweed are all 'invasive plant species' that cause problems to land and buildings. In addition, 'injurious weeds' such as certain ragworts, thistles, and types of dock are strictly controlled. Japanese knotweed has caused particular problems, since it has no natural predator in the UK, and causes significant damage to property.

Japanese Knotweed ('*Fallopia japonica*')

Japanese knotweed is an invasive non-native weed, found mainly in urban areas, where it is considered a nuisance in property development, because plants regrowing from rhizomes can come up through gaps in flooring in conservatories and patios. Sometimes it is found established on the edges of arable fields, and other places where garden waste or topsoil has been dumped.

It was introduced to gardens as an ornamental 'architectural' plant, and it is still grows widely in larger gardens and parks. Plants and fragments of root, if discarded, can become established in the wild, particularly along riverbanks, roads and railways, where propagules are easily dispersed.

Japanese knotweed can grow up to 10cm a day between the months of April and October. The roots can extend to a depth of three metres and up to seven metres laterally. If even a small piece of root or stem is left in the ground, it can reinfest the land. Its vigorous roots and top growth penetrate foundations, concrete hardstanding and walls, causing considerable damage. The costs of knotweed removal and treatment are substantial. The government has estimated the costs of eradicating Japanese knotweed from all of the UK at £2.6 billion.





Government Action

After some trials, in 2013 DEFRA authorised the introduction of a small insect from Japan (the psyllid, *Aphalara itadori*) that only feeds on the knotweed to control the spread of the plant. It will be many years before this has any effect nationally.

Liability to others

The owner of land affected by knotweed will be liable to his neighbours in common law if it spreads onto their land. Buildings insurance does not usually cover knotweed damage.

Lenders' attitudes

You may not be able to sell an affected property if a buyer cannot get a mortgage on it as a result of contamination by an invasive species. The Council of Mortgage Lenders (CML) has stated that mortgage lenders will expect the presence of knotweed to be noted on a residential valuation report. Lenders determine their own individual policies on this issue.

If knotweed is present, it is usually one of a number of factors the lender will consider, and the level of severity may be a factor. If mortgage lenders agree to lend on an affected property, they will normally require evidence of treatment that will eradicate the plant as a condition of lending. They may also require an insurance-backed guarantee.

Eradicating it from construction sites can cost well over £1,000 per square metre and, as a controlled waste, it can be expensive to dispose of the 'contaminated' topsoil.

Treatments and solutions

There is rarely a quick fix, and most treatments involve a combination of removal, barriers, plus a long term herbicide treatment management plan. Unless the ground is treated for many years, the plant can re-appear, as the roots and rhizomes are very resistant to treatment.

The **Invasive Non-Native Specialists Association** ('INNSA') (www.insa.org) can provide further information on knotweed treatment options, and details of a suitable specialist in your area.

However, unless you use an experienced contractor with a proper warranty, insurance and have a long-term remediation strategy carried out under a recognised Code of Practice, your knotweed treatment can leave you just as much at risk as when you first spot the distinctive leaves.

Caveat Emptor and specialist surveys

A seller is not under a duty to tell a buyer the property is affected by knotweed. The standard residential conveyancing enquiries ask whether the property is affected by Japanese knotweed, but the seller does not have to answer the question. However the sellers will be liable to a buyer for misrepresentation if they say there is no knotweed, when they know that there is. So, the seller may decide not to reply to this question if there is any doubt, leaving the buyer to make his own inspection and survey.

If there is any question over the presence of an invasive species on the property, then a survey should be carried out by a suitably experienced residential surveyor and/or a specialist invasive species consultant.

Further information

The **INNSA** website given above contain detailed further information on invasive plant species. The websites of the RICS, Environment Agency, DEFRA, The Japanese Knotweed Alliance and GOV.UK also have useful guidance on the issues. If you are concerned that a plant in your garden might be knotweed, then some useful photos of the plant (and other information) can be found at the GB Non Native Species Secretariat website at www.nonnativespecies.org.

