

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, and New Zealand pygmyweed are all 'invasive plant species' that can 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. In recent years homebuyers have been concerned about the effects of knotweed infestation on properties they intend to buy.

What is 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. 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, railway land, and other places where garden waste or topsoil has been dumped. Japanese knotweed can grow up to 10cm a day between the months of April and October. If even a small piece of root or stem is left in the ground, it can reinfest the land. The costs of knotweed removal and treatment are substantial. 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.

A change in approach to knotweed infestation

Research carried out over the last few years indicates that it actually poses less of a risk of damage to properties than many trees or woody shrubs. Also, that 3m is a more appropriate distance of typical spread than the 7m originally thought. A DEFRA report in 2020 commented that the attitude of the media and the public is disproportionate to the physical risk posed to property.

An RICS draft guidance note to valuers issued in August 2021 comments that knotweed rarely causes structural damage to dwellings, and it is incapable of causing damage in the same way as trees or woody plants such as buddleia.





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. UK Finance (formerly known as the Council of Mortgage Lenders or 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 an eradication & treatment management plan as a condition of lending. They may also require an insurance-backed guarantee.



Treatments and solutions

The RICS guidance notes comments that whereas the removal of damage-causing trees is comparatively straightforward, the treatment of knotweed is expensive, disruptive and may have to be carried out for a number of years. Remediating knotweed growth on adjoining property is also problematic because the property owner lacks any rights to control a treatment regime on the adjoining land. Also, it can be difficult to resolve knotweed problems arising on blocks of flats or conversions where the entire block can be blighted if the responsible person does not adopt a suitable approach.

There is rarely a quick fix, and most treatments involve a combination of removal, possibly creation of 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.

Management, not eradication, is now the aim

It is rarely going to be possible to remove all traces of knotweed, and a long term management plan is likely to be a more realistic solution. Often the problem is simply the blighting effect caused by the presence of knotweed and any damaging physical effects are secondary. The RICS report comments that the exaggerated public perception of the problem is out of all proportion to the cost of remediation. Even where the knotweed has been effectively remediated, properties may, unfortunately, retain a 'stigma' for some years afterwards.

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. Sellers will be liable to a buyer for misrepresentation if they say there is no knotweed, when they know that there is. As a result, 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 buyer should arrange for a survey should be carried out by a suitably experienced residential surveyor and/or a specialist invasive species consultant.

Further information

The **Invasive Non-Native Specialists Association** ('INNSA') www.insa.org website contains 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



The Society of Licensed Conveyancers