

(Amended) Advice to the Wye & Usk Foundation on the control and regulation of invasive species including Japanese Knotweed, Giant Hogweed and Himalayan Balsam from ACA June 2008

1. There are no statutes *specifically* concerned with the control of invasive non-native plant species.
2. The Weeds Act 1959 does not include within its list of species which are regarded as injurious: Himalayan Balsam, Giant Hogweed or Japanese Knotweed.
3. There does not appear to be a general requirement *per se* for a riparian owner to control or eradicate a non-native species where it is already established on his or her own land.
4. However, if an invasive species *spreads* from private land owned by a particular riparian owner onto neighbouring land, this may fall foul of Section 14 of the Wildlife and Countryside Act 1981. In order for Section 14 (2) to apply, a person or persons would need to be shown to “plant or otherwise cause to grow” one of the plant species listed in Schedule 9 Part II – which includes Giant Hogweed and Japanese Knotweed. Balsam is not included within this list. The problem with the use of this Act is that although the local authority has the power to enforce pursuant to Section 25 (2) of the WCA 1981, according to the DEFRA website, there have been no prosecutions since 1981.
5. If any of the riparian areas of the River Wye come within SSSIs or SPAs or SACs, and it can be shown that the invasive plants have caused an effect on the conservation of these statutory sites, then it may be that Natural England/Countryside Council for Wales might be pressed into action.
6. The riparian owner could theoretically be served with an *abatement notice* by the Local Authority for causing a *statutory nuisance* under the Environmental Protection Act 1990, Part III. This would depend on the interpretation of the wording in the relevant sections (e.g., s 79 (1) (a) – “any premises in such a state as to be prejudicial to health or a nuisance”; 79 (1) (e) “any accumulation or deposit which is prejudicial to health or a nuisance”).
7. If the riparian owner is a farmer who benefits from the provisions of the Common Agricultural Policy Single Payment and Support Scheme, there will be certain requirements in “maintaining land in good agricultural and environmental condition” (GAEC). Furthermore, the schedules to the relevant Regulations for England and for Wales include the following provisions: “a farmer must take *all reasonable steps* to prevent the spread of rhododendrum (*Rhododendrum ponticum*), Japanese

knotweed (*Fallopia japonica*), Giant Hogweed (*Heracleum mantegazzianum*) and Himalayan Balsam (*Impatiens glandulifera*) on his land and onto adjacent land” (para 9). Similar wording appears in the “Set-aside” regulations.

8. In situations where beneficiaries receive subsidies under the Habitat (Water Fringe) Regulations 1994, there is a reciprocal requirement to “control non-indigenous weeds such as Himalayan Balsam, Japanese knotweed and Giant Hogweed. . .” There is an obligation for farmers to permit entry and inspection to check compliance with the “management obligations” (reg 9). Presumably, then, if a farmer benefits from the policy and wishes to maintain his income, he would also be keen to remove these species from his own land.
 9. The Environment Agency would only usually enforce where there was a threat to the river flow or concerns over disposal. However, the Agency’s general duties may be triggered where there is a public right of way and a possible health and safety issue arises – for instance, where Giant Hogweed is growing on or near a public path.
 10. There is a possibility of a Common Law nuisance claim where it can be shown that, on the balance of probabilities, a neighbour has interfered with another’s enjoyment of his or her rights on the land through allowing the invasive species to spread. The remedy would be an injunction or compensation - perhaps measured in terms of the cost for its removal.
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