

A Guide to the Environmental Legislation for Weeds and Non Native Species



September 2017

Prepared by

FIRA International Limited

Maxwell Road, Stevenage, Hertfordshire, SG1 2EW, United Kingdom

Tel: +44(0)1438 777 700

Email: info@fira.co.uk

Contents

A Guide to the Environmental Legislation for Weeds and Non Native Species	1
Introduction	3
The Regulations	4
Wildlife and Countryside Act 1981	4
EU Regulation (1141/2014) on invasive alien (non-native) species.....	4
The Weeds Act 1959	4
Identifying and controlling non-native species on your property.....	5
Preventing the spread of harmful weeds.....	5
Preventing the spread of invasive, non-native plants	6
Enforcement	6
Penalties.....	7
Disposal of invasive, non-native plants and injurious weeds.....	7
Invasive and non-native plants	7
Injurious weeds.....	8
Appendix	9
Wildlife and Countryside Act 1981	9
EU Regulation (1141/2014) on invasive alien (non-native) species.....	9
Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010.....	9
Natural Environment and Rural Communities Act 2006	9
Countryside and Rights of Way Act 2000.....	9
Guidance to prevent weeds and invasive non-native plants spreading	9
MAFF Identification of Injurious Weeds.....	9
DEFRA Non-Native Species Identification Sheets	9
Natural England.....	9
Register of licenced waste carriers	9

Introduction

This guide has been prepared by FIRA International Ltd on behalf of the Furniture Industry Research Association.

FIRA International Ltd promote Environmental Compliance on behalf of the Research Association membership via consultations, the [Club Green](#) Environmental Compliance scheme and the [Furniture Industry Sustainability Programme](#) (FISP). It is apparent from audits conducted by FIRA International and from the Research Association's member's feedback that the management of weeds and the presence of non-native species is of increasing concern.

This document is a simplified guide to the Regulations that govern the identification and management of weeds and non-native flora species by occupiers and landowners in England and Wales. It does not replace any legislative documents that are available and is simply additional information to help achieve compliance. As such, the Regulations and relevant supporting documentation (details of which can be found at the end of this document) must also be understood.

All efforts have been made to ensure this document is correct at the time of going to press. The opinions and advice expressed are given in good faith. However, the authors cannot be held responsible for any action resulting from the content of this guide as the ultimate interpretation of the regulations rests with the courts. Where serious doubt occurs professional legal opinion should be sought.

The Regulations

Wildlife and Countryside Act 1981

The Wildlife and Countryside Act 1981 (WCA) is the principal legislation dealing with non-native species. The original Act has been amended in relation to England and Wales by various pieces of legislation, including the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010, the Natural Environment and Rural Communities Act 2006 and the Countryside and Rights of Way Act 2000.

It is illegal to plant or otherwise cause to grow in the wild any plant listed in Schedule 9 of the Act. The Schedule 9 list of plant species (Part II) has been amended by the Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010.

EU Regulation (1141/2014) on invasive alien (non-native) species

EU Regulations are legal acts of the European Union that becomes immediately enforceable as law in all member states simultaneously. This EU Regulation imposes restrictions on a list of species known as 'species of Union concern' and was published in Commission Implementing Regulation 2016/1141. The species listed are those whose potential adverse effects across the European Union are such that concerted action across Europe is deemed necessary. The list was drawn up by the European Commission and managed with EU Member States using risk assessments and scientific evidence.

The Department for the Environment, Food and Rural Affairs (DEFRA) produced a frequently asked questions document, the link for which can be found in Appendix A. The document provides guidance for landowners (p14 of the FAQ) when plants listed in the EU Invasive Alien Species Regulation are identified on property.

The Weeds Act 1959

The Weeds Act of 1959 is legislation that enables the United Kingdom government to serve notice upon the occupier of land, where there is evidence that there are injurious weeds growing. This notice requires occupiers of land to take such action as may be deemed necessary to prevent the weeds from spreading onto adjoining properties or into the wild.

Identifying and controlling non-native species on your property

There are two types of plants that need to be controlled under these environmental laws. Property owners must do both of the following to control specific plants:

- prevent invasive non-native plants from spreading into the wild and causing a nuisance
- prevent harmful weeds on occupied land from spreading on to a neighbour's property

DEFRA has developed [identification sheets](#) to assist landowners in the correct identification of non-native species. These sheets can be accessed from a long list of common names or by the plant's scientific name. They are also free to be downloaded, printed, used for stakeholder engagement and linked to from external websites.

Similarly, DEFRA has also developed resources to assist occupiers of land in the identification of injurious weeds as referenced in the Weeds Act of 1959.

Preventing the spread of harmful weeds

A number of weeds are identified as potentially dangerous to animals or likely to cause problems for agricultural production if uncontrolled. The weeds currently listed on the UK government website are:

- common ragwort
- spear thistle
- creeping or field thistle
- broad-leaved dock
- curled dock

Whilst it is not an offence in itself for these plants to grow on occupied property, occupiers are required to prevent them from spreading to agricultural land, particularly grazing areas or land used to produce forage, like silage and hay.

Occupiers must also select the most appropriate control method for the site and in certain circumstances may require permission to adopt some control methods. Removal of certain weeds from the property can require the use of an approved waste carrier.

Preventing the spread of invasive, non-native plants

Several species of plants are identified as non-native and fall in scope of both the Regulation and the Act. It is an offence to either plant or cause certain invasive and non-native plants to grow in the wild or allow them to spread to adjoining properties. This can include the movement of contaminated soil or plant cuttings.

The most commonly identified and problematic invasive, non-native plants include:

- Japanese knotweed
- giant hogweed
- Himalayan balsam
- rhododendron ponticum
- New Zealand pigmyweed (this is banned from sale)

Whilst there is no obligation under law to remove these plants from the property or to control the plants on the property, there is a clear obligation under law to ensure that they do not spread to adjoining properties. Many businesses, especially those adopting risk based management systems may identify the presence of an invasive species as a high risk of non-compliance should that species spread to an adjoining property.

Certain plants, including Japanese knotweed can produce seeds, but is extremely rare for these seeds to germinate. The most common method of dispersal is by means of stem, crown and rhizome (underground stem) sections. New plants will grow from the nodes of pieces of green stem, in soil or water. The implications for property owners who fail to control these plants on their property is that they will inevitably spread via rhizome sections onto adjoining properties or into the wild.

Failure to prevent these non-native species spreading to an adjoining property can result in the issuing of fines and a community protection notice for causing a nuisance.

Enforcement

Complaints relating to the spreading of weeds and non-native species are to be reported to Natural England.

Natural England will take the following steps:

- write to the landowner to ask them to remove the weeds - the landowner will be given 2 weeks to take action during the summer months
- write to the plaintiff, to establish if they have been removed
- decide whether enforcement action should be taken if the weeds aren't removed and arrange for the Rural Payment Agency to visit the site and, if appropriate, issue an enforcement notice.

The landowner cannot appeal a decision by Natural England to take action about weeds.

The Environment Agency plays a more active role in responding to complaints relating to invasive or non-native species. Soil or plant material that is contaminated with non-native and invasive plants species can cause severe ecological damage and may therefore be classified as a controlled waste.

It is an offence to keep, treat or dispose of waste that can harm human health or the environment unless the waste is transported by a registered waste carrier and an authorised landfill site or suitable disposal site is used.

Penalties

Offences under section 14 of the Wildlife and Countryside Act 1981 carry a maximum penalty of a £5,000 fine and or 6 months imprisonment on summary conviction at a Magistrates' Court.

If the matter is brought before the Crown Court there is no limit to the fine that can be handed down as it is based on whatever the court feels to be commensurate with the offence. For serious offences a custodial sentence of up to 2 years on indictment.

In summary penalties can be up to 2 years imprisonment and unlimited fines.

Disposal of invasive, non-native plants and injurious weeds

Invasive and non-native plants

There are a number of different treatments available to landowners seeking to remove or control invasive non-native plants. These include:

- spraying plants with chemicals
- burning plants
- burying plants
- disposing of plants off-site

Each of these treatments requires its own risk assessment and in some cases certificates, assessments and permission to spray plants must be obtained. A landowner may be required to obtain an environmental permit, a registered waste exemption or a trade effluent consent.

Should a landowner decide to bury non-native invasive plants they must first check with the Environment Agency to establish if they are able to do so. To bury non-native invasive plant waste without a permit the conditions set out in the Treatment and disposal of invasive non-native plants: RPS 178 must be adhered to.

Burning plants is a potential treatment but a business must first obtain a registered waste exemption or environmental permit.

The disposal of plants off-site must be done carefully and in accordance with the waste duty of care legislation. A business must use a registered waste carrier and an authorised landfill site. There is a public register on the Environment Agency website and the Local Authority should also be able to provide a list of authorised sites.

It is not possible to compost most non-native plants as:

- they're usually persistent
- they will survive the composting process
- they are liable to infest areas where the compost is used

Landowners must responsibly dispose of soil contaminated with persistent chemicals, including herbicides used in the non-native species removal process, which do not break down and are usually hazardous waste. Producers of such soil waste are obliged to inform those parties in the waste transfer chain that the material contains herbicides and non-native plant waste as part of their waste duty of care obligations.

Injurious weeds

Common ragwort is the most commonly reported weed and can seriously harm grazing livestock. Ragwort and other injurious weeds can be controlled using a combination of:

- spraying or weed wiping the plants with chemicals (known as 'herbicides')
- removing live, dead or dying plants by pulling or digging them out
- cutting plants back to prevent the dispersal of seeds
- burning plants using a spot burner

For large quantities of weeds, an on-site biomass facility should be used, where heat and energy can be generated, or an incinerator that has a permit issued by the Environment Agency.

If burning or disposing of ragwort off-site, occupiers must ensure that a registered waste carrier is used to remove the waste and that the waste is disposed of at an appropriate site.

It is an offence under the waste duty of care legislation to use a site which is not permitted to legally dispose of this type of waste. Failure to comply can result in fines and in certain circumstances a custodial sentence.

If any doubt exists as to whether a designated treatment for weeds or non-native species is appropriate, landowners and occupiers of land should consult the Environment Agency and or Natural England.

Appendix

Wildlife and Countryside Act 1981

<http://www.legislation.gov.uk/ukpga/1981/69>

EU Regulation (1141/2014) on invasive alien (non-native) species

<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1417443504720&uri=CELEX:32014R1143>

Wildlife and Countryside Act 1981 (Variation of Schedule 9) (England and Wales) Order 2010

<https://secure.fera.defra.gov.uk/nonnativespecies/downloadDocument.cfm?id=375>

Natural Environment and Rural Communities Act 2006

<http://www.legislation.gov.uk/ukpga/2006/16/contents>

Countryside and Rights of Way Act 2000

<http://www.legislation.gov.uk/ukpga/2000/37/introduction>

Weeds Act 1959

<https://www.legislation.gov.uk/ukpga/Eliz2/7-8/54>

Guidance to prevent weeds and invasive non-native plants spreading

<https://www.gov.uk/guidance/prevent-the-spread-of-harmful-invasive-and-non-native-plants>

MAFF Identification of Injurious Weeds

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69265/pb4192-injurious-weeds.pdf

DEFRA Non-Native Species Identification Sheets

<http://www.nonnativespecies.org/index.cfm?sectionid=47>

Natural England

<https://www.gov.uk/government/organisations/natural-england>

The public register for environmental information

<https://www.gov.uk/access-the-public-register-for-environmental-information>

The Environment Agency

<https://www.gov.uk/government/organisations/environment-agency>

Register of licenced waste carriers

<https://www.gov.uk/find-registered-waste-carrier>