

2013 addendum to the 2006 knotweed code of practice

Since the publication of the knotweed code of practice in 2006, there have been some changes to legislation which affect pages 6-7 and 36-37 of the code. These pages have been replaced with the pages below.

In addition, there are two technical areas that need to be clarified:

- **Use of Picloram**

Where the code refers to the use of Picloram, it is essential to ensure that groundwater quality is protected, as well as nearby watercourses. Groundwater Source Protection Zones (SPZ's) are areas of groundwater where there is a particular sensitivity to pollution risks due to the closeness of a drinking water source and how the groundwater flows. They are used to protect abstractions used for public water supply and other forms of distribution to the public such as mineral and bottled water plants, breweries, and food production plants. Generally the closer the activity is to a groundwater source, then the greater the risk. More information on Groundwater SPZ's is available on our [website](#). **Picloram should not be used within the inner zone of an SPZ, and a risk-based approach should be adopted when considering its use outside of the inner zone.**

- **Soil screening methods**

Since the publication of the code, various soil screening and sieving methods have become a popular method for rhizome removal. Where conditions are appropriate for this method, screening can provide an effective means of rhizome removal, **however, screened soil must still be regarded as potentially containing viable knotweed rhizome and must not be reused off-site, or sold for re-use.** If soil is taken off-site, it should be disposed of at an approved landfill, in accordance with section 6 of the code. If soil has been efficiently screened it can be reused on-site, in accordance with section 2.4 of the code.

These pages replace pages 6 and 7 of the knotweed code of practice, 2006:

Managing Japanese Knotweed - legislation

Legislation covering the handling and disposal of knotweed includes the following:

The Control of Pesticides Regulations 1986 require any person who uses a pesticide to take all reasonable precautions to protect the health of human beings, creatures and plants, safeguard the environment and in particular avoid the pollution of water.

For the application of pesticides in or near water, approval from the Environment Agency should be sought before use.

Section 14(2) of the **Wildlife and Countryside Act 1981 (WCA 1981)** states that *“...if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 9, he shall be guilty of an offence.”* Japanese knotweed is one of the plants listed in Schedule 9. Anyone convicted of an offence under Section 14 of the WCA 1981 may face a fine of £5,000 and/or 6 months imprisonment, or 2 years and/or an unlimited fine on indictment.

The **Environmental Protection Act 1990 (EPA 1990)** contains a number of legal provisions concerning “controlled waste”, which are set out in Part II. Any soil or plant material contaminated with Japanese knotweed that you discard, intend to discard or are required to discard is likely to be classified as controlled waste. The most relevant provisions in the EPA are in section 33 (1) (a) and (1) (b). These create offences to do with the deposit, treating, keeping or disposing of controlled waste without a permit. Section 33 (1) (c) makes it an offence to keep, treat or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health. Section 34 places duties on any person who imports, produces, carries, keeps, treats or disposes of controlled waste. Waste must be handled responsibly and in accordance with the law at all stages between its production and final recovery or disposal.

Waste must be transferred to an authorised person, in other words a person who is either a registered carrier or exempted from registration by the **Waste (England and Wales) Regulations 2011** (Waste Regulations). A waste transfer note must be completed and signed giving a written description of the waste as per regulation 35 of the Waste Regulations. This must be sufficient to enable the receiver of the waste to handle it in accordance with their own duty of care. Failure to comply with these provisions is an offence.

The **Hazardous Waste Regulations 2005 (HWR 2005)** contain provisions about the handling and movement of hazardous waste. Hazardous wastes are defined by reference to regulation 6 of the HWR 2005. A waste is a hazardous waste if it is listed as a hazardous waste in the List of Wastes Decision as well as the **List of Waste (England) Regulations 2005**. The Secretary of State is also able to decide if a particular batch of waste is to be determined as hazardous. Schedule 3 of the HWR 2005 includes a list of properties that render waste hazardous. Annex I, II and III of the **Hazardous Waste Directive** also provides further guidance on what constitutes hazardous waste.

Consignment notes must be completed when any hazardous waste is transferred. They must include details about the hazardous properties and any special handling requirements. If a consignment note is completed, a waste transfer note is not necessary. Untreated Japanese knotweed is not classed as hazardous waste, but material containing knotweed which has been treated with certain herbicides, may be classified as hazardous waste.

The **Environmental Permitting (England and Wales) Regulations 2010 (EPR)** includes reference to the 'Exercise of relevant functions' in Schedule 9, paragraph 4. These objectives are derived from Article 13 of the **European Waste Framework Directive**. These objectives states that necessary measures shall be taken to ensure that *"...waste management is carried out without endangering human health, without harming the environment and, in particular without risk to water, air, soil, plants or animals; without causing a nuisance through noise or odours; and without adversely affecting the countryside or places of special interest."*

Exemptions from the need for a permit are available in some circumstances, and are set out in Schedule 2 and 3 of the EPR. Exempt waste operations must comply with the general rules governing operations and must register with the relevant authority.

The above legal provisions have consequences for a range of people, including anybody involved in the management or disposal of knotweed. For example knotweed which is cut down or excavated and removed from a development site must be transferred to an authorised person, and correctly described. It must be disposed of appropriately, as set out below in this Code.

If you are going to bury knotweed on a development site you will need to consult the Environment Agency first to make sure that the material does not contain any other contaminant that may affect the quality of groundwater.

If you pollute the environment or cause harm to human health you may be prosecuted. Anyone who uses a herbicide must ensure that they do not

pollute the water environment and the use of herbicides in or near water requires approval from us. If any waste soil or knotweed is sent for landfill either before or after any treatment, it must go to a landfill that is authorised to receive it. It is not an offence to have Japanese knotweed on your land and it is not a notifiable weed. Allowing Japanese knotweed to grow onto other peoples property may be regarded as a private nuisance under common law, but this would be a civil matter.

Where you rely on the methods of on site knotweed management in paragraphs 4.1, 5.4 and 5.5 this would normally require you to have an environmental permit or a pollution prevention and control permit. However if you carry out these activities in full accordance with this code of practice, and the work meets the waste relevant objectives described above, then in accordance with our Enforcement and Prosecution Policy we would not normally prosecute for failure to have an environmental permit.

Our Role

The Environment Agency is responsible for regulating waste. We grant waste management permits, register exemptions and can take enforcement action including prosecution if the law is not complied with. We give approvals under the **Control of Pesticides Regulations 1986** for use of pesticides in or near water.

We may take enforcement action under WCA 1981, but there are also a number of other organisations that can do so. We would not normally use this legislation unless a waste offence had also been committed.

We are not responsible for controlling Japanese knotweed, other than that growing on our land. Managing knotweed is the responsibility of the owner/occupier of a site. We do not endorse Japanese knotweed management plans, or endorse companies that do this.

These pages replace pages 36 and 37 of the knotweed code of practice, 2006:

Environmental Permitting (England and Wales) Regulations 2010 (EPR)

The EPR includes reference to the 'Exercise of relevant functions' in Schedule 9, paragraph 4. These objectives are derived from Article 13 of the European Waste Framework Directive. These objectives states that necessary measures shall be taken to ensure that *"...waste management is carried out without endangering human health, without harming the environment and, in particular without risk to water, air, soil, plants or animals; without causing a nuisance through noise or odours; and without adversely affecting the countryside or places of special interest."*

Exercise of relevant functions:

See the Environmental Permitting (England and Wales) Regulations 2010, above.

Formulation:

A particular herbicide traded under a specific name. Different formulations of herbicide may share the same active ingredient, but are designed for use in different situations. For instance, only certain formulations of glyphosate are approved for use in or near water.

Green belt:

Area of undeveloped land in proximity to a community that has been preserved to conserve the aesthetic beauty of the location. These areas are referred to as 'green wedges' in Wales.

Hazardous Waste Regulations 2005 (HWR 2005):

HWR 2005 contains provisions about the handling and movement of hazardous waste. Consignment notes must be completed when any hazardous waste is transferred, which include details about the hazardous properties and any special handling requirements. If a consignment note is completed, a waste transfer note is not necessary. Material containing knotweed that has been treated with herbicide, may be classified as hazardous waste.

Hazardous waste:

Hazardous wastes are defined by reference to regulation 6 of the HWR 2005. A waste is a hazardous waste if it is listed as a hazardous waste in the List of Wastes Decision as well as the List of Waste (England) Regulations 2005. The Secretary of State is also able to decide if a particular batch of waste is to be determined as hazardous. Schedule 3 of the HWR includes a list of properties that render waste hazardous. Annex I, II and III of the Hazardous Waste Directive also provides further guidance on what constitutes hazardous waste.

Heave:

Physical disruption of a hard surface caused by an upward stress.

Hybrid:

A plant or animal that results from reproduction by two different species.

Membrane:

In this code, membrane describes a relatively low specification protective layer used for containing Japanese knotweed when it is being transported (sections 5.1, 6.1, 6.2, 7.2). Compare with 'root barrier membrane', below.

Perennial:

A plant that continues its growth from year to year.

Persistent herbicide:

A herbicide that contains an active ingredient that will not be swiftly degraded after it has been applied. This can sometimes limit the manner in which treated soil can be reused or disposed of.

Rhizome:

Underground stem. Enables Japanese knotweed to survive over-winter, when the canes die back. Small sections of rhizome, as little as 0.7g can regrow into a new plant.

Rhizomatous:

Of or pertaining to a rhizome.

Root barrier membrane:

High specification membrane used for highly stressed short-term protection, such as haulage routes (section 2.2, 7.1 and 7.3), or containing Japanese knotweed in the long term (sections 4, 5 and 8.5). Root barrier membranes must be made of a material that is fit for purpose. It should be made of a material that can be:

- a) used without damage;
- b) provided in large sizes, to minimise the need for seals;
- c) sealed securely;
- d) remain intact for at least 50 years (guaranteed by the manufacturer);
- e) resist UV damage if used where it is exposed to sunlight;
- f) buried without polluting groundwater from chemicals leached from it. Compare with 'membrane', above.

Sett:

The system of tunnels and chambers used by badgers and protected by law.

Tines:

Long pointed teeth attached to a digger bucket to rake out rhizome.

Viable:

Capable of growing into a new plant.

Waste exemption:

When the disposal of waste is deemed not to present a risk to public health or the environment. A waste operation, water discharge or groundwater activity must meet certain criteria in order to be exempt from the need for an Environmental Permit.

Wildlife and Countryside Act 1981 (WCA 1981):

Section 14(2) states that *“if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 9, he shall be guilty of an offence.”* Japanese knotweed is one of the plants listed in the Schedule.