

INVASIVE AND PROTECTED PLANTS



CORE TOPICS:

- Obligations to control the spread onto agricultural land of native plants that can be toxic to livestock or interfere with the growing of crops (including ragwort).
- Offences relating to growing certain non-native species in the wild.
- Protected species of plant and the implications for rewilders.

KEY TAKEAWAYS:

- You may need to consider whether there is a risk of invasive native species – such as ragwort – spreading to agricultural land and if so, which control methods are best aligned with the values of your rewilding project.
- There is no general duty to remove, eradicate, treat or report invasive non-native species – such as Japanese knotweed – that are present on land. However, it is an offence to plant or otherwise cause these plants to grow in the wild.
- Certain plants are protected and actions such as picking them or uprooting are unlawful unless you hold a relevant licence.

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1. INTRODUCTION

This note provides a high-level overview of key legislation imposing responsibilities on rewilders in relation to plants. It is split into three parts, each describing the responsibilities (and liability), offences and enforcement action: (1) Invasive Native Species (“INS”); (2) Invasive Non-native Species (“INNS”); and (3) Protected Species.

2. INVASIVE NATIVE SPECIES OF PLANTS (INS)

2.1 Responsibilities and liability (INS)

The Weeds Act 1959 (the “**Weeds Act**”) is the main legislation that compels an “*occupier of land*” to control the spread of certain designated INS that may be harmful to grazing livestock or growing crops in Great Britain. These are:

- spear thistle (*Cirsium vulgare*);
- creeping or field thistle (*Cirsium arvense*);
- common ragwort (*Senecio jacobaea*);
- curled dock (*Rumex crispus*); and
- broad-leaved dock (*Rumex obtusifolius*).

Guidance published in 2019 from Natural England (“NE”) and the Department for Environment, Food and Rural Affairs (“Defra”) confirms that occupiers are permitted to have these INS growing on their land; however, they must:

- stop them from spreading onto agricultural land, particularly grazing areas or land used for forage; and
- select the most appropriate control method, if required.

The above guidance provides advice on control methods to stop the spread of INS onto agricultural land that is used for grazing livestock, producing forage or growing crops. These range from pulling up, digging up, cutting back, burning or spraying the plants with chemicals, to managing livestock so they do not overgraze and create bare areas where INS can grow. A rewilding project, as an occupier of the rewilding land, may need to consider whether there is a risk of INS spreading to agricultural land and if so, which control methods are best aligned with the values of the rewilding project.

In relation to controlling ragwort specifically, the Code of Practice on How to Prevent the Spread of Ragwort (the “**Code**”) is relevant and legally binding, insofar as it is admissible in court as evidence when considering a case related to the spread of common ragwort.² The Code acknowledges that common ragwort is a native plant which is very important to wildlife in the UK, and does not therefore seek to eradicate it, but only to control it where there is a threat to the health and welfare of animals. The Code aims to clarify what would be considered reasonable action to comply with an enforcement notice (there is more information on enforcement notices below). Ragwort treatment and removal should adhere to the Code as this will assist you, should you need to establish a defence to any legal action, including negligence.

All landholders, occupiers and managers are expected to co-operate and take collective action to control the spread of ragwort in accordance with the level of risk it poses. Rewilders should not let ragwort grow on land that they use for grazing horses or other animals (or feed/forage production), nor allow it to spread onto neighbouring land used for such purposes.

There is generally a “high risk” of it spreading where it is present and flowering/seeding within 50m of land used for grazing by horses and other animals or land used for feed/forage production. In such case you will need to take immediate action to control its spread. A “medium risk” applies when it is 50 to 100m from such grazing/feed or forage production land; and a “low risk” applies where it is more than 100m from such land. These distances are guidelines, and variations in local factors such as prevailing winds, topography, soil type and vegetation cover must also

be considered when determining: (i) the risk of spreading onto land used for grazing and/or feed or forage production; and (ii) the most appropriate control methods, where required. This applies whether the land is public or private.

Where the risk level is high, warranting immediate action to control the spread, the Code contains a decision tree designed to assist you in selecting the most appropriate control method. Non-chemical methods such as land and pasture management, pulling out or biological control are favoured over the use of herbicides. The latter requires a risk assessment prior to any use and may additionally be subject to obtaining permission if the land is protected as e.g. a Special Protection Area or a Site of Special Scientific Interest.

These obligations, particularly in relation to INS control, require rewilding projects to strike a balance between letting nature take its course and complying with obligations to prevent the spread of INS onto agricultural land.

2.2 Offences and enforcement action (INS)

If a designated INS is growing on any land, the relevant Minister or delegated public body (NE in England and Natural Resources Wales (“NRW”) in Wales) can serve a written notice on the occupier requiring them to take action to prevent it spreading³. Such enforcement notices may be issued following complaints to NE or NRW,⁴ usually from an adjoining occupier and require occupiers to take action to prevent its spread, although neighbours should attempt to resolve the matter informally before contacting NE or NRW.

The authorities have complete discretion to investigate complaints, where there is a risk that INS might spread onto neighbouring land. Priority is given to investigating complaints where there is a risk of INS spreading to land used for forage production, grazing horses or livestock and other agricultural activities. They may, on producing their authorisation, enter the land for inspection, but not until written notice of the date of the inspection has been given to the relevant occupier. If an inspection results in an enforcement notice being served on the occupier, an unreasonable failure to comply with the notice would constitute an offence. Offending occupiers, on conviction in

the magistrates' court, are liable to pay a fine not exceeding level three on the standard scale (currently £1,000).⁵

An occupier is guilty of a further offence if they fail to remedy the breach within 14 days after the conviction.⁶ NE and NRW also have powers devolved from the relevant Minister to remove INS where landholders fail to do so and to charge landholders the reasonable costs of doing so.

Finally, while non-compliance with the Code (as opposed to an enforcement notice) is not an offence, failing to follow the Code might lend support to a negligence or nuisance claim brought by a neighbouring landholder.

EXAMPLE 1

Rewilder A notices that ragwort is growing on their land within 50 metres of the boundary of a neighbour's property. Rewilder A decides to do nothing and the ragwort spreads across their land onto the neighbour's land.

If the neighbour's land is used for grazing animals or forage production, the Rewilder A should have taken immediate action to control the spread of ragwort using an appropriate control technique, taking account of the status of the land. This is because the ragwort was within 50 metres of the neighbouring land, so considered to pose a high risk of spreading onto the neighbouring land, requiring immediate action. Rewilder A must also prevent the ragwort from growing or spreading onto any of their own land that they use for feed/forage production or grazing horses and other animals (if applicable).

Rewilder A should review the Code to determine which control method, such as pulling and levering by hand or machine, burning, or as a last resort cutting or using herbicides, is most appropriate to control the spread. They should consider whether the rewilding land is a protected area. If so, permission may be needed before using certain control methods.

Since no notice has been served by the authorities, it would not be an offence for Rewilder A to take no action *at this stage* (although contrary to the Code). However, the fact that Rewilder A has not followed the Code could still be used as evidence in a private legal action against Rewilder A. If an enforcement notice is later served on Rewilder A by the relevant delegated authority, then the prescribed action *must* be taken, or Rewilder A may risk conviction in the magistrates' court and a fine (currently) of up to £1,000. Rewilder A's inaction may also lead to NE or NRW (as delegated authorities) facilitating the removal of the ragwort at Rewilder A's expense, if Rewilder A fails to remedy the problem within 14 days.

By contrast, if the neighbouring land is *not* used for grazing animals or forage production, then no action is required, unless an enforcement notice is served on Rewilder A.

3. INVASIVE NON-NATIVE SPECIES OF PLANTS ("INNS")

3.1 Responsibilities and liability (INNS)

As noted above in the key takeaways, the Wildlife and Countryside Act 1981 ("**W&C Act**") controls the spread of specific INNS, including knotweed, giant hogweed, floating pennywort, rhododendron, Himalayan balsam and New Zealand pygmyweed. [Schedule 9, Part II](#) of the W&C Act outlines the full list of these INNS that are already established in the wild in Great Britain, but which continue to pose a conservation threat to native biodiversity and habitats, such that the law seeks to prevent them spreading further.

There is no general duty to remove, eradicate, treat or report INNS that are present on land. However, a person is guilty of an offence⁷ if (without a licence) they plant or otherwise cause to grow in the wild any of the plants listed in Schedule 9 of the W&C Act. Defra's 2021 [guidance](#) defines "*plants*

'in the wild'" as intentionally placing viable plant material in or on suitable medium so that it can grow.

Similarly, under the EU Invasive Alien Species Regulation (1143/2014), adopted in the UK as retained EU regulation,⁸ rewilders must not intentionally release, keep, transport, breed or permit to reproduce or grow in the wild certain "*INNS of special concern*" which are listed in the Annex to the implementing Regulation.⁹

The risk of rewilders committing these offences seems low given it is unlikely that rewilders would intentionally plant or reproduce invasive non-native plants as part of their rewilding projects (which generally focus on bringing back native species). However, if a rewilder was aware that they had an INNS on their land, simply letting the INNS go to seed could fall within one of the offences. This is because "*otherwise cause to grow*"¹⁰ and "*permit...to reproduce, grow*"¹¹ create wide restrictions, depending on the person's knowledge and intentions.

In addition, failure to take reasonable measures to control an INNS that is not in the wild, which results in it spreading into the wild, or being negligent or reckless as to its spreading, could amount to the offence of causing it to grow in the wild.¹²

Allowing INNS to spread onto neighbouring land might also result in common law private nuisance proceedings which could include a neighbour seeking compensation for loss of enjoyment or amenity, costs of removal, damage to land due to an uncontrolled INNS, a continuing injunction against reinfestation and/or requiring action to control the INNS. Even where there is no physical damage to the neighbour's property, the encroachment of an INNS such as Japanese knotweed could be sufficient for a claim to succeed.¹³ Where this is the case, any occupier that allowed the INNS to spread to neighbouring land may be liable to pay damages and remediation costs. The Royal Institution of Chartered Surveyors has recently published revised [guidance](#) for surveyors who encounter Japanese knotweed when undertaking valuations or surveys of residential properties, which provides helpful information on the problem and management of this particular INNS, together with various links to further information on the topic.

3.2 Offences (INNS)

It is not an offence for INNS to be present on land, however, it is an offence to:

- (i) plant or otherwise cause to grow in the wild any plant that is included in Schedule 9 of the W&C Act;¹⁴ or
- (ii) release, keep, transport, breed or permit to reproduce in the wild any INNS which features in the [list](#)¹⁵ of “INNS of special concern”.¹⁶

An occupier of land may be subject to a claim in nuisance for allowing an INNS to spread to a neighbouring property. Further information on actions related to nuisance can be found in the *Rewilding in England & Wales: Liability to Neighbouring Landholders* briefing.

When INNS are disposed of as part of the removal process (whether voluntarily or due to a complaint or enforcement action), they are likely to be classified as controlled waste. It is an offence to:

- (i) deposit controlled waste (or knowingly cause or permit to be deposited) in or on any land without a permit from the Environment Agency, or in a manner likely to cause pollution;¹⁷
- (ii) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health;¹⁸ or
- (iii) to prevent the escape of the waste from the control of an occupier or of any other person.¹⁹

In particular, Japanese knotweed is designated as “controlled waste” that can only be removed and disposed of by licensed organisations.²⁰

3.3 Enforcement action (INNS)

The offence of planting or otherwise causing to grow in the wild any plant that is included in Schedule 9 of the W&C Act²¹ can result in punishments that range from a £5,000 fine and/

or six months’ imprisonment to an unlimited fine and/or two years’ imprisonment.

A person guilty of intentionally introducing, keeping, selling or releasing “INNS of special concern” is liable to imprisonment for a term of up to six months and/or a fine (on summary conviction) or to imprisonment for a term of up to two years and/or a fine (on conviction on indictment).²²

A person guilty of the disposal offences described in i) and ii) above could face a maximum imprisonment term of up to five years and/or an unlimited fine.²³ A person guilty of the disposal offence described in iii) above could be liable to pay an unlimited fine.²⁴

A local authority can serve a notice on an occupier requiring it to remedy the condition of land adversely affected under the [Town and Country Planning Act 1990](#), such as when there is an infestation of Japanese knotweed. This is a general power not solely related to land adversely affected by INNS. Failure to comply with such a notice can result in prosecution in the magistrates’ court and a fine not exceeding level three on the standard scale (currently £1,000).²⁵ Local authorities are also permitted to undertake any necessary works and recover their reasonable costs from occupiers.

liabilities described in Section 3 (Responsibilities and liability (INNS)). Environmental authorities in England and Wales have the power to enter into voluntary species control agreements (“SCAs”) with occupiers to control INNS and, if necessary, impose species control orders (“SCOs”) on them too.²⁶ The “owner of premises” is defined as a freeholder, leaseholder or a person who exercises powers of management or control of the premises.²⁷ Therefore, an occupier such as a rewilder can be considered as the owner of premises for these purposes and as such be subject to SCAs or SCOs. For an SCO to be made, the INNS must have a significant adverse impact on biodiversity, environmental, social or economic interests, with no appropriate alternative way of avoiding that impact. SCOs compel occupiers to carry out control or removal operations or permit such operations to be carried out by the environmental authorities themselves. The use of SCAs and SCOs by environmental authorities is subject to complying with the [Species Control Provisions Code of](#)

[Practice for England and the Code of Practice for Species Control Provisions in Wales](#). Failure to comply with an SCO without reasonable excuse, or intentional obstruction of the operations required under an SCO, can result in a summary conviction to imprisonment for up to 51 weeks and/or an unlimited fine.²⁸

The Home Office has previously acknowledged that the [Anti-Social Behaviour, Crime and Policing Act 2014](#) is intended to be flexible and could also be used against an occupier who fails to clear an INNS such as Japanese knotweed. Such an occupier could be served with a community protection notice compelling them to take steps to rectify the situation, if it is deemed to be having a detrimental effect on the quality of life of those in the locality.²⁹

EXAMPLE 2

Rewilder B is considering removing large swathes of rhododendron and Japanese knotweed from the rewilding land as it is outcompeting and displacing native plants to the detriment of local wildlife.

Rewilders are permitted to remove rhododendron and Japanese knotweed from their rewilding land although there is no specific legal requirement to remove them simply because they are INNS.

There are different disposal rules for Japanese knotweed when compared with rhododendron. As both plants are likely to be considered controlled waste, Rewilders should be extremely careful when disposing of them. In particular, Japanese knotweed can only be disposed of by licensed organisations and the disposal of rhododendron may also need a permit from the Environment Agency.

When removing these INNS, Rewilder B should take caution not to unintentionally plant or otherwise cause to grow these INNS elsewhere, as this is an offence. The offence could be triggered, for instance, by not properly disposing of the INNS.

We would recommend seeking specialist land management and legal advice if considering removing any INNS, particularly considering punishment for disposal offences includes imprisonment of up to five years and/or an unlimited fine.

4. PROTECTED WILD PLANTS

4.1 Responsibilities and liability (protected wild plants)

All the wild plant species outlined in [Schedule 8](#) of the W&C Act are offered legal protection in England and Wales. According to the W&C Act, a “**wild plant**” means “*any plant which is or (before it was picked, uprooted or destroyed) was growing wild and is of a kind which ordinarily grows in Great Britain in a wild state.*” It is unlawful to intentionally pick, uproot or destroy any wild plant of a species listed in Schedule 8 of the W&C Act. This applies for both public and private land, and the plant will be deemed to be wild unless the contrary is shown. It is therefore worth checking whether a plant is listed in Schedule 8 of the W&C Act before removing or replacing it for any reason.

Liability under the W&C Act can be limited or discharged completely if the unlawful act concerning the protected wild plant:

- (i) has been carried out under a licence obtained from the relevant authority;
- (ii) was incidental to a lawful activity which could not reasonably have been avoided and, whilst carrying out that lawful activity, that person took reasonable precautions to avoid damage to the protected plant;³⁰ or
- (iii) could not have been reasonably foreseen in the pursuit of the lawful activity.

4.2 Offences and enforcement action (protected wild plants)

Offences under the W&C Act include intentionally picking, uprooting, destroying or selling any of the wild plants listed in Schedule 8, including any seed or spore attached to the wild plant, unless it can be shown that the act meets one or more of the criteria that limit or discharge liability. Such offences carry a summary conviction of up to six months’ imprisonment and/or an unlimited fine.

Offences under the [Conservation of Habitats and Species Regulations 2017](#) (the “**Habitats Regulations 2017**”) include deliberately picking, collecting, cutting, uprooting, destroying, having, transporting or selling any wild plant of a protected species on the [list](#) which has its natural range in Great Britain (set out in Schedule 5 of those regulations).³¹ A person guilty of this offence is liable on summary conviction in the magistrates’ court to up to six months’ imprisonment and/or an unlimited fine. Despite similar punishments and requirements for attracting liability, this is a separate offence to that under the W&C Act outlined above.

EXAMPLE 3

Rewilder C wants to introduce different species of plants to boost the natural biodiversity of the rewilding land.

In the process of such (re)introduction, Rewilder C must ensure that they do not plant any of the INNS outlined in [Schedule 9, Part II](#) of the W&C Act. Failure to take reasonable measures to control INNS that results in the plant spreading into the wild, or being negligent or reckless about that occurring, could amount to an offence punishable by up to an unlimited fine and/or two years’ imprisonment.

In the process of such (re)introduction, Rewilder C must also avoid picking, uprooting or destroying any of the protected wild plants listed in Schedule 8 of the W&C Act unless it is an activity carried out within one of the exceptions referred to above.³² Committing such an

offence would have serious consequences, including up to six months’ imprisonment and/or an unlimited fine.

Rewilder C must also avoid deliberately picking, collecting, cutting, uprooting, destroying, having, transporting or selling any protected species of wild plant listed in Annex IV(b) of the [Council Directive 92/43/EEC](#). This is an offence that is also punishable by up to six months’ imprisonment and/or an unlimited fine.³³

Given the severity of the possible enforcement action, it is advisable for a Rewilder to seek specific legal advice before such (re)introduction.

Although outside the scope of this note, Rewilders would need to also consider whether any licence would be required under section 16 W&C Act for any of their planned (re)introduction of plant species.

Thank you to Clifford Chance LLP for their legal support in producing this briefing note.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. You should not assume that the case studies apply to your situation and specific legal advice should be obtained.

The hyperlinks to legislation, guidance and various other external sources within this briefing are correct as of 15 July 2022.

ENDNOTES

1. An “occupier” can own land outright, or hold it (e.g. under a lease), or be a public authority responsible for a public road, so this can be a broader concept than “rewilder”.
2. [Ragwort Control Act 2003](#).
3. Section 1, Weeds Act.
4. Complaints of this kind are not usually directed to the Minister of Agriculture, Fisheries and Food.
5. Section 2, Weeds Act.
6. Section 2, Weeds Act.
7. Section 14(2), W&C Act.
8. Article 7(1), [EU Invasive Alien Species Regulation \(1143/2014\)](#), which is the EU legislation that applies in the UK following Brexit through [Retained Regulation \(EU\) 1143/2014](#).
9. [Annex to Commission Implementing Regulation \(EU\) 2016/1141](#).
10. Section 14(2), W&C Act.
11. Article 7(1)(g), [EU Invasive Alien Species Regulation \(1143/2014\)](#).
12. Section 14, W&C Act.
13. For example, [Network Rail Infrastructure Ltd v Williams and Waistell \[2018\] EWCA Civ 1514](#).
14. Section 14, W&C Act.
15. [Annex to Commission Implementing Regulation \(EU\) 2016/1141](#).
16. Article 7(1), [EU Invasive Alien Species Regulation \(1143/2014\)](#), which is the EU legislation that applies in the UK following Brexit through the [Retained Regulation \(EU\) 1143/2014](#).
17. Section 33, [Environmental Protection Act 1990 \(“EP Act”\)](#).
18. Section 33, EP Act.
19. Section 34, EP Act.
20. Section 33 and 34, EP Act.
21. Section 14, W&C Act.
22. Article 20, Part 4 of the [Invasive Alien Species \(Enforcement and Permitting\) Order 2019](#). (cf. Article 7(1), [EU Invasive Alien Species Regulation \(1143/2014\)](#), which is the EU legislation that applies in the UK following Brexit through the [Retained Regulation \(EU\) 1143/2014](#)).
23. Section 33(8), EP Act.
24. Section 34(6), EP Act.
25. Section 216(2), [Town and Country Planning Act 1990](#).
26. Schedule 9A, W&CA as amended by Part 5, the [Infrastructure Act 2015](#).
27. Section 4(2) of Schedule 9A W&CA as amended by Part 4, [Infrastructure Act 2015](#).
28. Schedule 9A, W&C Act.
29. Section 43, [Anti-Social Behaviour, Crime and Policing Act 2014](#).
30. Section 13, W&C Act.
31. Regulation 47, [Habitats Regulations 2017](#) (cf. Annex IV(b), [Council Directive 92/43/EEC](#), which is EU legislation that applies in the UK following Brexit).
32. Section 16(3), W&C Act.
33. Regulation 47(7), [Habitats Regulations 2017](#).



WHO'S BEHIND THIS GUIDANCE?



This note is part of a range of information produced by Rewilding Britain and The Lifescape Project to provide practical guidance to rewilders. Each is designed to help rewilding practitioners across Britain overcome common barriers in their rewilding journey, as identified through conversations with members of our Rewilding Network.

Rewilding Britain's Rewilding Network provides a central meeting point for landowners, land and project managers and local groups in Britain, offering opportunities for collaboration and allowing smaller landowners to take on larger-scale rewilding together. If you find this useful, please consider joining the Network, where those in Britain can explore these issues further with others in the same boat.



The Lifescape Project is a rewilding charity using a multi-disciplinary approach to achieve its mission of catalysing the creation, restoration and protection of wild landscapes. Lifescape's legal team is working to support rewilders in understanding how the law applies to their activities and pursuing systemic legal change where needed to support the full potential of rewilding. These notes form part of Lifescape's Rewilding Law Hub which aims to provide a legal resource centre for those wanting to manage land in accordance with rewilding principles.



JOIN THE CONVERSATION

We'd love to hear what you've found useful in these notes and where we can help fill gaps in the guidance so that we can make sure they remain an up-to-date practical tool for rewilders.

Get in touch with us at:
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