

Draft Regulations laid before Parliament under sections 142(7)(a) and 143(5)(b) of the Environment Act 2021, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No. 000

ENVIRONMENTAL PROTECTION, ENGLAND

TOWN AND COUNTRY PLANNING, ENGLAND

**The Biodiversity Gain (Town and Country Planning)
(Consequential Amendments) Regulations 2024**

Made - - - -

Date

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 142(1) and 143(1) of the Environment Act 2021(a).

In accordance with sections 142(7)(a) and 143(5)(b) of that Act a draft of this instrument has been laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

Introduction

Citation and commencement

1.—(1) These Regulations may be cited as the Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024.

(2) These Regulations come into force on the day on which paragraph 3 of Part 2 of Schedule 14 to the Environment Act 2021 comes into force.

Extent and application

2. These Regulations extend to England and Wales and apply in England only.

Amendments to the Town and Country Planning Act 1990

3. The Town and Country Planning Act 1990(b) is amended in accordance with regulations 4 to 10.

(a) 2021 c. 30.

(b) 1990 c. 8.

PART 2

Amendments related to the local planning authority: biodiversity gain in England

4. In section 1(5) (local planning authorities: general)(a) in paragraph (c), after the words in brackets insert—

“and Part 1A of Schedule 7A (Biodiversity Gain in England: Local Planning Authority).”.

5. In section 5(1) (the Broads)(b), for “and sections 249, 250 and 300” substitute “, and sections 90A, 249, 250 and 300, and Schedule 7A”.

6. After paragraph 12 of Schedule 7A(c) (biodiversity gain in England) insert—

“PART 1A

LOCAL PLANNING AUTHORITY

Introduction

12A. This Part sets out rules for determining the local planning authority for the purposes of this Schedule.

General Rule

12B. The general rule is that the local planning authority is—

- (a) the local planning authority which granted the planning permission, or
- (b) the local planning authority which could have granted the planning permission had it not been granted by the Secretary of State or a person appointed by the Secretary of State.

12C. The general rule does not apply where—

- (a) the Mayor of London has given a direction under section 2A(d)(applications of strategic importance) (see instead paragraphs 12D and 12E);
- (b) a combined authority(e) has granted planning permission in exercise of a power that corresponds to section 2A (see instead paragraph 12G);
- (c) an order is made under another Act providing for who is to be the local planning authority for the purposes of Schedule 7A (see instead paragraph 12H).

Rules in cases involving the Mayor of London

12D.—(1) This paragraph applies where the Mayor of London has—

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- (a) Section 1 of the Town and Country Planning Act 1990 (c. 8) was amended by: section 18(6)(a) and (b) and Schedule 18 to the Local Government (Wales) Act 1994 (c. 19); paragraphs 32(1)(a) and (b) of Schedule 10 to, and paragraph 1 of Schedule 24 to, the Environment Act 1995 (c. 25); section 31(1) of the Greater London Authority Act 2007 (c. 24).
 - (b) Section 5 of the Town and Country Planning Act 1990 (c. 8) was amended by paragraph 9(1) of Schedule 7 to the Planning and Compensation Act 1991 (c. 34).
 - (c) Schedule 7A to the Town and Country Planning Act 1990 (c. 8) was inserted by paragraph 2 of Part 1 of Schedule 14 to the Environment Act 2021 (c. 30).
 - (d) Section 2A of the Town and Country Planning Act 1990 (c. 8) was inserted by section 31(2) of the Greater London Authority Act 2007 (c. 24) and amended by the paragraph 31 of Schedule 22 to the Localism Act 2011 (c. 20), paragraphs 2(1) and 2(2)(a) of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27) and section 149(1) and paragraph 2 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).
 - (e) A combined authority is a body corporate established by an order of the Secretary of State under section 103(1) of the Local Democracy, Economic Development and Construction Act 2009 (c. 20).

- (a) given a direction under section 2A in relation to an application for planning permission, and
 - (b) granted the planning permission.
- (2) The local planning authority is—
- (a) in a case where the Mayor of London so directs, the local planning authority to whom the application was made;
 - (b) in any other case, the Mayor of London.

12E.—(1) This paragraph applies where—

- (a) the Mayor of London has given a direction under section 2A in relation to an application for planning permission, and
- (b) the Secretary of State has granted the planning permission under section 76A(a) or 77(b).

(2) The local planning authority is whichever of the following the Secretary of State determines is the local planning authority—

- (a) the Mayor of London;
- (b) the local planning authority to whom the application was made.

12F.—(1) This paragraph applies where—

- (a) the Mayor of London has given a direction under section 2A in relation to an application for planning permission, and
- (b) the planning permission is granted on an appeal under section 78(c).

(2) The local planning authority is whichever of the following the person determining the appeal directs is the local planning authority—

- (a) the Mayor of London;
- (b) the local planning authority to whom the application was made.

Rule in case involving combined authorities

12G.—(1) This paragraph applies where a combined authority has granted planning permission in exercise of a function that—

- (a) is conferred by an order made under section 105A of the Local Democracy, Economic Development and Construction Act 2009 (other public authority functions)(d), and
- (b) corresponds to the function of the Mayor of London under section 2A.

(2) The local planning authority is—

- (a) in a case where the order mentioned in sub-paragraph (1)(a) provides for the combined authority to exercise the functions of the local planning authority for the purposes of Schedule 7A, the combined authority;

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- (a) Section 76A of the Town and Country Planning Act 1990 (c. 8) was inserted by section 44 of the Planning and Compulsory Purchase Act 2004 (c. 5) and is in force in relation to exercise of powers specified in article 2 of S.I. 2004/2097 and in relation to England (article 2 of S.I. 2005/2081) subject to savings specified (article 4(1) of S.I. 2005/2081).
 - (b) Section 77 of the Town and Country Planning Act 1990 (c. 8) was: inserted by paragraph 20(2) and (3) of Schedule 12 to the Housing and Planning Act 2016 (c. 22); and amended by: paragraph 10 of Schedule 12 to the Localism Act 2011 (c. 20); paragraphs 11(a) and (b) of Schedule 4 to the Infrastructure Act 2015 (c. 7); S.I. 2014/2773 (W. 280); and paragraph 1(11) of Schedule 9 to the Levelling-up and Regeneration Act 2023 (c. 55) from a date to be appointed.
 - (c) Section 78 of the Town and Country Planning Act 1990 (c. 8) was: inserted by section 43(2) of the Planning and Compulsory Purchase Act 2004 (c. 5); and amended by: section 123(3) and paragraph 11 of Schedule 12 to the Localism Act 2011 (c. 20); paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27); S.I. 2014/2773 (W. 280); paragraph 12 of Schedule 4 to the Infrastructure Act 2015 (c. 7); section 45 and 47(1) of, and paragraph 7(2) of Schedule 7 to, the Planning (Wales) Act 2014 anaw. 4; paragraph 21 of Schedule 12 to the Housing and Planning Act 2016 (c. 22); and section 116(5) and section 113(5) and paragraph 1(12) of Schedule 9 to the Levelling-up and Regeneration Act 2023 (c. 55) from a date to be appointed.
 - (d) 2009 c. 20. Section 105A was inserted by section 7 of the Cities and Local Government Devolution Act 2016 (c. 1).

- (b) in any other case, the local planning authority to whom the application for planning permission was made.

Rule in cases involving orders made under other Acts

12H.—(1) In cases where a relevant order provides for the local planning authority, for the purposes of Schedule 7A the local planning authority is the person specified in the order.

(2) For the purposes of sub-paragraph (1), a “relevant order” means an order that is made under—

- (a) section 149(1) of the Local Government, Planning and Land Act 1980 (urban development corporation as local planning authority)(a);
- (b) paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zone authority as local planning authority)(b);
- (c) section 67(1) of the Housing Act 1988 (housing action trust as local planning authority)(c);
- (d) section 13(1) of the Housing and Regeneration Act 2008(d) (Homes and Communities Agency as local planning authority);
- (e) sections 91, 105 or 105A of the Local Democracy, Economic Development and Construction Act 2009(e) (local authority and public authority functions);
- (f) section 198(2) of the Localism Act 2011 (mayoral development corporation as local planning authority)(f).

(3) This paragraph does not apply in relation to any case set out in paragraphs 12D to 12G (rules in cases involving the Mayor of London or combined authorities).

Supplementary

12I. In a case where a direction has been given under section 266(1A) (application for planning permission by the statutory undertaker to be dealt with by the Secretary of State and appropriate Minister) and not been revoked, references to the Secretary of State are to be read as references to the Secretary of State and the appropriate Minister(g).

12J. References in this Part of this Schedule to the local planning authority to whom an application for planning permission was made include references to the local planning authority to whom such an application would have been made had it not been made to the Secretary of State under section 62A(h).”.

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- (a) 1980 c. 65. Section 149(1) of the Local Government, Planning and Land Act 1980 (c. 65) was amended by Part I of Schedule 1, and paragraph 44(6)(a) of Schedule 2, to the Planning (Consequential Provisions) Act 1990 (c. 11).
 - (b) 1980 c. 65.
 - (c) 1988 c. 50. Section 67(1) of the Housing Act 1988 was amended by Part I of Schedule 1, and paragraph 79(3)(a) of Schedule 2, to the Planning (Consequential Provisions) Act 1990 (c. 11).
 - (d) 2008 c. 17.
 - (e) 2009 c. 20. Section 91 of the Local Democracy, Economic Development and Construction Act 2009 (c. 20) was amended by paragraphs 18(2), (3)(a) and (b) of Schedule 5 to the Cities and Local Government Devolution Act 2016 (c. 1). Section 105 of the Local Democracy, Economic Development and Construction Act 2009 (c. 20) was amended by sections 6(2)(a), 9(5) and 14(4) of the Cities and Local Government Devolution Act 2016 (c. 1).
 - (f) 2011 c. 20.
 - (g) The term “appropriate Minister” has the meaning in section 265 of the Town and Country Planning Act 1990 (c. 8).
 - (h) Section 62A of the Town and Country Planning Act 1990 (c. 8) was: inserted by section 1(1) of the Growth and Infrastructure Act 2013 (c. 27); moved under a new heading “England: option to make application directly to the Secretary of State” by paragraph 4 of Schedule 4 to the Planning (Wales) Act 2015 anaw. 4; and amended by: sections 153(1) to (4) of the Housing and Planning Act 2016 (c. 22); and amended by sections 113(3)(a) and (b) and sections 110(3)(a) and (b) and 129 of the Levelling-up and Regeneration Act 2023 (c. 55) on a date to be appointed.

PART 3

Amendments related to permission to develop land without compliance with conditions previously attached: biodiversity gain in England

7. In section 73 (determination of applications to develop land without conditions previously attached)(a) for subsection (2C)(c) substitute—

“(c) the conditions subject to which the planning permission is granted under this section—

- (i) do not affect the post-development value of the onsite habitat as specified in the earlier biodiversity gain plan, and
- (ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat within the meaning of regulations made under paragraph 18 of Schedule 7A, do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier biodiversity gain plan.”.

PART 4

Amendments related to appeals: biodiversity gain in England

8. In section 78 (right to appeal against planning decisions and failure to take such decisions)—

- (a) in subsection (2) after “development order” insert “or in relation to a biodiversity gain plan specified in regulations under paragraph 16(a) of Schedule 7A (biodiversity gain in England: regulations about determinations)”;
- (b) in subsection (3) after “development order” insert “or, in relation to a biodiversity gain plan specified in regulations under paragraph 16(a) of Schedule 7A”.

9. In section 284 (validity of development plans and certain orders, decisions and directions)(b), after subsection (3)(j) (inserted by paragraph 6 of Schedule 11 to the Levelling-Up and Regeneration Act 2023), insert—

“, or

- (k) any determination by the Secretary of State whether to approve a biodiversity gain plan under Schedule 7A (biodiversity gain in England).”.

10. In section 336(1) (interpretation), after the definition of “authority to whom Part II of the 1959 Act applies”, insert—

““biodiversity gain plan” has the meaning in paragraph 14(1) of Schedule 7A;”.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

Name

Minister of State for Housing, Planning and Building Safety
Department for Levelling Up, Housing and Communities

Date

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- (a) Section 73 of the Town and Country Planning Act 1990 (c. 8) was amended by: paragraph 4 of Schedule 3 to the Neighbourhood Planning Act 2017 (c. 20); section 35(7) of the Planning (Wales) Act 2015 anaw. 4; paragraph 3(5) of Schedule 14(2) to the Environment Act 2021 (c. 30) and section 114(6) of the Levelling-up and Regeneration Act 2023 (c. 55) on a date to be appointed.
 - (b) Section 284 of the Town and Country Planning Act 1990 (c. 8) was amended by: section 82(2) of the Planning and Compulsory Purchase Act 2004 (c. 5); and subsection (3) was amended by paragraph 6 of Schedule 10 and paragraph 7 of Schedule 11 to the Levelling-up and Regeneration Act 2023 (c. 55) on a date to be appointed.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Environment Act 2021 (c. 30) inserted section 90A and Schedule 7A into the Town and Country Planning Act 1990 (c. 8) (biodiversity gain in England). This sets out that, subject to exceptions, every planning permission (for the development of land in England) is deemed to be granted subject to a new general condition. The condition requires a biodiversity gain plan to be submitted and approved by the planning authority before development can lawfully commence. The biodiversity gain plan should contain an assessment of the value of natural habitats before development and after development, and ensure that at least a 10% net gain is achieved between the earlier and later values.

These Regulations make amendments to the Town and Country Planning Act 1990 that are consequential on the provisions inserted by the Environment Act 2021 and regulations under that Act.

Part 2 (amendments related to the local planning authority: biodiversity gain in England) provides rules for determining the local planning authority for the purposes of Schedule 7A to the Town and Country Planning Act 1990.

Part 3 amends section 73 of the Town and Country Planning Act 1990 (permission to develop land without compliance with conditions previously attached). It provides that if the conditions, subject to which permission is granted under section 73, do not change the effect of the development on onsite habitat which is irreplaceable habitat, a biodiversity gain plan which was previously approved is regarded as approved for the purpose of the permission granted under that section. If the conditions affect the post-development biodiversity value of the onsite habitat as specified in the earlier plan, that earlier plan will not be regarded as approved for the purpose of the permission granted under section 73.

Part 4 (appeals) amends sections 78, 284 and 336 of the Town and Country Planning Act 1990. Section 78 is amended to include a reference to the regulations that will contain the time period within which an appeal to the Secretary of State may be made in the absence of a determination whether to approve a biodiversity gain plan. Section 284 is amended such that the route to challenge a decision of the Secretary of State whether to approve the biodiversity gain plan will be to the High Court under section 288 (consistent with other planning decisions determined by the Secretary of State). Section 336 is amended to insert the definition of the biodiversity gain plan.

An Explanatory Memorandum has been published alongside these Regulations on www.legislation.gov.uk. A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary and the public sector is available from the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

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£8.14

<http://www.legislation.gov.uk/id/ukdsi/2024/9780348254419>

ISBN 978-0-34-825441-9



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