



Levelling-up and Regeneration Act 2023

2023 CHAPTER 55

PART 3

PLANNING

CHAPTER 6

OTHER PROVISION

135 Biodiversity net gain: pre-development biodiversity value and habitat enhancement

In Schedule 7A to the TCPA 1990 (biodiversity gain in England)—

- (a) in paragraph 5(4), after “6” insert “, 6A, 6B”;
- (b) after paragraph 6 insert—

“6A If—

- (a) a person carries on activities on land on or after 25 August 2023 in accordance with a planning permission (other than the planning permission referred to in paragraph 5(1)),
- (b) on the relevant date, development for which that other planning permission was granted—
 - (i) has not been begun, or
 - (ii) has been begun but has not been completed, and
- (c) as a result of the activities the biodiversity value of the onsite habitat referred to in paragraph 5(1) is lower on the relevant date than it would otherwise have been,

the pre-development biodiversity value of the onsite habitat is to be taken to be its biodiversity value immediately before the carrying on of the activities.

Changes to legislation: There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Section 135. (See end of Document for details)

- 6B (1) This paragraph applies where there is insufficient evidence of the biodiversity value of an onsite habitat immediately before the carrying on of the activities referred to in paragraph 6 or 6A.
- (2) The biodiversity value of the onsite habitat immediately before the carrying on of the activities referred to in paragraph 6 or 6A is to be taken to be the highest biodiversity value of the onsite habitat which is reasonably supported by any available evidence relating to the onsite habitat.”;
- (c) in paragraph 10—
- (i) in sub-paragraph (1), after “habitat enhancement” insert “of an offsite habitat”;
- (ii) after sub-paragraph (1) insert—
- “(1A) For the purposes of sub-paragraph (1) (and without prejudice to paragraphs 3 and 4(1)), a habitat enhancement is calculated as the amount by which the projected value of the offsite habitat as at the end of the maintenance period referred to in section 100(2)(b) of the Environment Act 2021 exceeds its pre-enhancement biodiversity value.
- (1B) The pre-enhancement biodiversity value of an offsite habitat is the biodiversity value of the offsite habitat on the relevant date.
- (1C) The relevant date is—
- (a) the date on which the application is made to register the land subject to the habitat enhancement in the biodiversity gain site register, or
- (b) such other date as may be specified in the conservation covenant or planning obligation.
- (1D) But if—
- (a) a person carries on activities on an offsite habitat on or after 25 August 2023 otherwise than in accordance with—
- (i) planning permission, or
- (ii) any other permission of a kind specified by the Secretary of State by regulations, and
- (b) as a result of the activities the biodiversity value of the offsite habitat is lower on the relevant date than it would otherwise have been,
- the pre-enhancement biodiversity value of the offsite habitat is to be taken to be its biodiversity value immediately before the carrying on of the activities.”;
- (d) in paragraph 12(1), after the definition of “onsite habitat” insert—
- ““offsite habitat” means habitat which is not onsite habitat.”

Changes to legislation: There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Section 135. (See end of Document for details)

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Commencement Information

- I1** S. 135 not in force at Royal Assent, see [s. 255\(3\)\(b\)](#)
- I2** [S. 135](#) in force at 12.2.2024 by [S.I. 2024/92](#), [reg. 3](#)

Changes to legislation:

There are currently no known outstanding effects for the Levelling-up and Regeneration Act 2023, Section 135.