
DRAFT STATUTORY INSTRUMENTS

2024 No.

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

PART 2

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

6. After paragraph 12 of Schedule 7A(1) (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(2)(applications of strategic importance) (see instead paragraphs 12D and 12E);
- (b) a combined authority(3) 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).

(1) 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).

(2) 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).

(3) 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).

Rules in cases involving the Mayor of London

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

- (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(4) or 77(5).
- (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(6).
- (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—

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- (4) 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).
 - (5) 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.
 - (6) 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.

- (a) is conferred by an order made under section 105A of the Local Democracy, Economic Development and Construction Act 2009 (other public authority functions)(7), 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;
 - (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)(8);
- (b) paragraph 5 of Schedule 32 to the Local Government, Planning and Land Act 1980 (enterprise zone authority as local planning authority)(9);
- (c) section 67(1) of the Housing Act 1988 (housing action trust as local planning authority)(10);
- (d) section 13(1) of the Housing and Regeneration Act 2008(11) (Homes and Communities Agency as local planning authority);
- (e) sections 91, 105 or 105A of the Local Democracy, Economic Development and Construction Act 2009(12) (local authority and public authority functions);
- (f) section 198(2) of the Localism Act 2011 (mayoral development corporation as local planning authority)(13).

(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(14).

(7) 2009 c. 20. Section 105A was inserted by section 7 of the Cities and Local Government Devolution Act 2016 (c. 1).

(8) 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).

(9) 1980 c. 65.

(10) 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).

(11) 2008 c. 17.

(12) 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).

(13) 2011 c. 20.

(14) The term “appropriate Minister” has the meaning in section 265 of the Town and Country Planning Act 1990 (c. 8).

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(15).”.

(15) 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.