

Status: Point in time view as at 12/02/2024.

Changes to legislation: Town and Country Planning Act 1990, PART 1 is up to date with all changes known to be in force on or before 22 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 7A

BIODIVERSITY GAIN IN ENGLAND

Textual Amendments

- F1** Sch. 7A inserted (3.11.2023 for specified purposes, 12.2.2024 for specified purposes) by Environment Act 2021 (c. 30), s. 147(3), Sch. 14 para. 2 (with s. 144); S.I. 2023/1170, reg. 2(d); S.I. 2024/44, reg. 2(1)(d)(2) (with regs. 3, 4)

PART 1

OVERVIEW AND INTERPRETATION

Overview

- (1) This Schedule makes provision for grants of planning permission in England to be subject to a condition to secure that the biodiversity gain objective is met.
- (2) Paragraphs 2 to 12 have effect for the purposes of this Schedule.

Biodiversity gain objective

- (1) The biodiversity gain objective is met in relation to development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage.
- (2) The biodiversity value attributable to the development is the total of—
 - the post-development biodiversity value of the onsite habitat,
 - the biodiversity value, in relation to the development, of any registered offsite biodiversity gain allocated to the development, and
 - the biodiversity value of any biodiversity credits purchased for the development.
- (3) The relevant percentage is 10%.
- (4) The Secretary of State may by regulations amend this paragraph so as to change the relevant percentage.

Biodiversity value and the biodiversity metric

- References to the biodiversity value of any habitat or habitat enhancement are to its value as calculated in accordance with the biodiversity metric.

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- 4
- (1) The biodiversity metric is a document for measuring, for the purposes of this Schedule, the biodiversity value or relative biodiversity value of habitat or habitat enhancement.
 - (2) The biodiversity metric is to be produced and published by the Secretary of State.
 - (3) The Secretary of State may from time to time revise and republish the biodiversity metric.
 - (4) Before publishing or republishing the biodiversity metric the Secretary of State must consult such persons as the Secretary of State considers appropriate.
 - (5) The Secretary of State may by regulations make transitional provision in relation to the revision and republication of the biodiversity metric.
 - (6) The Secretary of State must lay the biodiversity metric, and any revised biodiversity metric, before Parliament.

Pre-development biodiversity value

- 5
- (1) In relation to any development for which planning permission is granted, the pre-development biodiversity value of the onsite habitat is the biodiversity value of the onsite habitat on the relevant date.
 - (2) The relevant date is—
 - (a) in a case in which planning permission is granted on application, the date of the application, and
 - (b) in any other case, the date on which the planning permission is granted.
 - (3) But the person submitting the biodiversity gain plan for approval and the planning authority may agree that the relevant date is to be a date earlier than that specified in sub-paragraph (2)(a) or (b) (but not a date which is before the day on which this Schedule comes into force in relation to the development).
 - (4) This paragraph is subject to paragraphs 6^[F2], 6A, 6B] and 7.

Textual Amendments

F2 Words in Sch. 7A para. 5(4) inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), ss. 135(a), 255(3)(b) (with s. 247); S.I. 2024/92, reg. 3

- 6
- If—
- (a) a person carries on activities on land on or after 30 January 2020 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 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.

- I
- If—

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- ^{F3}6A
- (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.

Textual Amendments

F3 Sch. 7A paras. 6A, 6B inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 135(b), 255(3)(b)** (with s. 247); S.I. 2024/92, reg. 3

- [^{F3}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.]

Textual Amendments

F3 Sch. 7A paras. 6A, 6B inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 135(b), 255(3)(b)** (with s. 247); S.I. 2024/92, reg. 3

- 7
- Where planning permission is granted in respect of land which is registered in the biodiversity gain site register under section 100 of the Environment Act 2021, the pre-development biodiversity value of the land is the total of—
- (a) the biodiversity value of the onsite habitat on the relevant date, and
 - (b) to the extent that it is not included within that value, the biodiversity value of the habitat enhancement which is, on that date, recorded in the register as habitat enhancement to be achieved on the land.

Textual Amendments

F2 Words in Sch. 7A para. 5(4) inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 135(a), 255(3)(b)** (with s. 247); S.I. 2024/92, reg. 3

F3 Sch. 7A paras. 6A, 6B inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 135(b), 255(3)(b)** (with s. 247); S.I. 2024/92, reg. 3

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Post-development biodiversity value

- 8 (1) In relation to any development for which planning permission is granted, the post-development biodiversity value of the onsite habitat is the projected value of the onsite habitat as at the time the development is completed.
- (2) That value is to be calculated by taking the pre-development biodiversity value and—
- (a) if at the time the development is completed the development will, taken as a whole, have increased the biodiversity value of the onsite habitat, adding the amount of that increase, or
 - (b) if at the time the development is completed the development will, taken as a whole, have decreased the biodiversity value of the onsite habitat, subtracting the amount of that decrease.

This is subject to paragraph 9.

- 9 (1) This paragraph applies in relation to any development for which planning permission is granted where—
- (a) the person submitting the biodiversity gain plan for approval proposes to carry out works in the course of the development that increase the biodiversity value of the onsite habitat, and
 - (b) the planning authority considers that the increase is significant in relation to the pre-development biodiversity value.
- (2) The increase in biodiversity value referred to in sub-paragraph (1) is to be taken into account in calculating the post-development biodiversity value of the onsite habitat only if the planning authority is satisfied that the condition in sub-paragraph (3) is met.
- (3) The condition is that any habitat enhancement resulting from the works referred to in sub-paragraph (1)(a) will, by virtue of—
- (a) a condition subject to which the planning permission is granted,
 - (b) a planning obligation, or
 - (c) a conservation covenant,
- be maintained for at least 30 years after the development is completed.
- (4) The Secretary of State may by regulations amend sub-paragraph (3) so as to substitute for the period for the time being specified there a different period of at least 30 years.

Registered offsite biodiversity gains

- 10 (1) “Registered offsite biodiversity gain” means any habitat enhancement [^{F4}of an offsite habitat], where—
- (a) the enhancement is required to be carried out under a conservation covenant or planning obligation, and
 - (b) the enhancement is recorded in the biodiversity gain site register (as to which, see section 100 of the Environment Act 2021).

[For the purposes of sub-paragraph (1) (and without prejudice to paragraphs 3 and ^{F5}(1A) 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.

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- (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.]
- (2) References to the allocation of registered offsite biodiversity gain are to its allocation in accordance with the terms of the conservation covenant or planning obligation referred to in sub-paragraph (1)(a).
- (3) The biodiversity value of registered offsite biodiversity gain is measured, under the biodiversity metric, in relation to development to which it is allocated.

Textual Amendments

- F4** Words in Sch. 7A para. 10(1) inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), [ss. 135\(c\)\(i\), 255\(3\)\(b\)](#) (with s. 247); S.I. 2024/92, reg. 3
- F5** Sch. 7A para. 10(1A)-(1D) inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), [ss. 135\(c\)\(ii\), 255\(3\)\(b\)](#) (with s. 247); S.I. 2024/92, reg. 3

Biodiversity credits

- 11 “Biodiversity credits” means credits under section 101 of the Environment Act 2021.

General

- 12 (1) In relation to development for which planning permission is granted—
- “onsite habitat” means habitat on the land to which the planning permission relates;
- [^{F6}“offsite habitat” means habitat which is not onsite habitat.]
- “planning authority” means the local planning authority, except that—
- (a) in a case where the planning permission is granted by Mayoral development order under section 61DB, “planning authority” means such of the Mayor of London or the local planning authority as may be specified in the order;

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- (b) in a case where the planning permission is granted by the Secretary of State under section 62A, 76A or 77, “planning authority” means such of the Secretary of State or the local planning authority as the Secretary of State may determine;
 - (c) in a case where the planning permission is granted on an appeal under section 78, “planning authority” means such of the person determining the appeal or the local planning authority as that person may direct.
- (2) “Habitat enhancement” means enhancement of the biodiversity of habitat.
- (3) References to the grant of planning permission include the deemed grant of planning permission.]

Textual Amendments

- F6** Words in Sch. 7A para. 12(1) inserted (12.2.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), ss. 135(d), 255(3)(b) (with s. 247); S.I. 2024/92, reg. 3

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