

2024 No. 47

ENVIRONMENTAL PROTECTION, ENGLAND

TOWN AND COUNTRY PLANNING, ENGLAND

**The Biodiversity Gain Requirements (Exemptions) Regulations
2024**

<i>Made</i>	- - - -	<i>17th January 2024</i>
<i>Laid before Parliament</i>		<i>19th January 2024</i>
<i>Coming into force</i>		<i>12th February 2024</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by section 333(2A) of and paragraph 17 of Schedule 7A to the Town and Country Planning Act 1990(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Biodiversity Gain Requirements (Exemptions) Regulations 2024.

(2) These Regulations come into force on 12th February 2024.

(3) These Regulations extend to England and Wales.

Biodiversity gain planning condition

2. In these Regulations, “biodiversity gain planning condition” means the condition referred to in paragraph 13 (general condition of planning permission) of Schedule 7A to the Town and Country Planning Act 1990.

Temporary exemption for small developments

3.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for small development where—

(a) the application for planning permission for small development was made before 2nd April 2024; or

(b) planning permission is granted for small development which has effect before 2nd April 2024.

(2) The biodiversity gain planning condition does not apply in relation to a section 73 planning permission where the original planning permission to which the section 73 planning permission relates was exempt by virtue of paragraph (1).

(a) 1990 c. 8; subsection (2A) was inserted into section 333 by paragraph 14 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5); Schedule 7A was inserted by section 98 of, and Schedule 14 to, the Environment Act 2021 (c. 30).

(3) In this regulation—

“original planning permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions;

“section 73 planning permission” means planning permission granted on an application made under section 73 of the Town and Country Planning Act 1990 (determination of applications to develop land without compliance with conditions previously attached);

“small development” means development which is not major development within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015(a).

De minimis exemption

4.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for development which meets the first and second conditions.

(2) The first condition is that the development does not impact an onsite priority habitat.

(3) The second condition is that the development impacts—

- (a) less than 25 square metres of onsite habitat that has biodiversity value(b) greater than zero; and
- (b) less than 5 metres in length of onsite linear habitat.

(4) For the purposes of this regulation—

- (a) “priority habitat” means a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006(c);
- (b) a habitat is impacted where the habitat is lost or degraded such that there is a decrease in the biodiversity value of that habitat;
- (c) “linear habitat” means the types of hedgerow habitat or watercourse habitat identified for the purposes of the biodiversity metric(d) (which are measured by length (expressed in kilometres) rather than area).

Householder applications

5. The biodiversity gain planning condition does not apply in relation to planning permission for development which is the subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

High Speed Railway Transport Network

6.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for development forming part of, or ancillary to, the high speed railway transport network comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013(e).

(2) In this regulation “transport network” and “high speed railway transport network” have the same meaning as in the High Speed Rail (Preparation) Act 2013.

(a) S.I. 2015/595; there are amendments to article 2 but none is relevant.

(b) See paragraph 3 of Schedule 7A to the Town and Country Planning Act 1990 for the definition of “biodiversity value”.

(c) 2006 c. 16; see the list published at <https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england>. A hard copy of the list is available from the DEFRA Helpline address given at the end of the explanatory note below.

(d) See paragraph 4 of Schedule 7A to the Town and Country Planning Act 1990.

(e) 2013 c. 31.

Biodiversity gain site

7.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the biodiversity gain planning condition which applies in relation to another development.

(2) In determining whether a development is undertaken solely or mainly for the purpose specified in paragraph (1), no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee.

Self-build and custom build applications.

8.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for development which—

- (a) consists of no more than 9 dwellings;
- (b) is carried out on a site which has an area no larger than 0.5 hectares; and
- (c) consists exclusively of dwellings which are self-build or custom housebuilding.

(2) In this regulation “self-build or custom housebuilding” has the same meaning as in section 1(A1) of the Self-build and Custom Housebuilding Act 2015(a).

Review

9.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published within 5 years of the coming into force of these Regulations.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(b) requires that a report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

17th January 2024

Rebecca Pow
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) 2015 c. 17; subsection (1A) was inserted into section 1 by section 9(1) of the Housing and Planning Act 2016 (c. 22).
(b) 2015 c. 26.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in England only, exempt certain developments from meeting the biodiversity gain requirement that would otherwise be imposed as a general condition of planning permission.

That requirement is that the biodiversity value attributable to the development exceeds the pre-development biodiversity value by at least the statutorily specified percentage. Biodiversity value means the value of any habitat or habitat enhancement as calculated in accordance with the biodiversity metric published by the Secretary of State.

The exemptions in these Regulations relate to:

- (a) small developments where an application for planning permission is made or has been granted before April 2024,
- (b) developments with no impact on priority habitat and where impacts on other habitat fall below specified thresholds,
- (c) householder applications,
- (d) the high-speed railway network,
- (e) off-site gain developments i.e. developments which fulfil the biodiversity net gain requirement arising in relation to another development, and
- (f) certain self-build and custom build developments.

These Regulations also require the Secretary of State to carry out a review of these Regulations at least once in every 5 years.

An Impact Assessment for these Regulations has been produced and is available at www.gov.uk or from DEFRA Helpline, Seacole building, 2 Marsham Street, London SW1P 4DF.

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