
STATUTORY INSTRUMENTS

2024 No. 48

**The Biodiversity Gain Requirements
(Irreplaceable Habitat) Regulations 2024**

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 and come into force on 12th February 2024.

(2) In these Regulations “Part 2 of Schedule 7A” means Part 2 of Schedule 7A to the Town and Country Planning Act 1990.

(3) These Regulations extend to England and Wales.

Definition of “irreplaceable habitat”.

2.—(1) For the purposes of Part 2 of Schedule 7A, “irreplaceable habitat” means any habitat of a description specified in the first column of the tables in the Schedule.

(2) In Table 1 in the Schedule, each description of habitat has the same meaning as in the list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006(1) (“the List”).

(3) In Table 2 in the Schedule, each description of habitat in column 1 is to be construed in accordance with the provision in the corresponding position in column 2.

(4) Natural England may issue guidance for the purpose of identifying whether a habitat falls within the descriptions in the tables in the Schedule.

Modification of application of Part 2 of Schedule 7A

3.—(1) Subject to regulation 4, Part 2 of Schedule 7A applies in relation to any part of a development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat, with the following modifications.

(2) Paragraph 14(2) applies as if—

- (a) in paragraph (a) the words “and any other habitat” were omitted; and
- (b) paragraphs (d) and (e) were omitted.

(3) Paragraph 15 applies as if—

- (a) in sub-paragraph (2)—
 - (i) paragraphs (c) and (d) were omitted, and
 - (ii) for paragraph (e) there were substituted—

“(e) that the adverse effect of the development on the biodiversity of the onsite habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact”; and

(1) 2006 c. 16; the list published under section 41 can be accessed at <https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england> and a hard copy may be obtained from DEFRA Helpline, Seacole Building, 2 Marsham Street, London SW1P 4DF.

(b) after sub-paragraph (2) there were inserted—

“(3) For the purposes of sub-paragraph (2)(e), arrangements are appropriate only if they secure that there is a compensation plan in place that secures appropriate compensation relative to the baseline habitat type, and which does not include the use of biodiversity credits.”.

Exception for phased development

4. Regulation 3 does not apply in relation to—

- (a) the grant of outline planning permission, where the reservation of matters for subsequent approval has the effect of requiring or permitting development to proceed in phases; or
- (b) the grant of any kind of planning permission, where the grant is subject to conditions (whether requiring the subsequent approval of any matters or otherwise) having that effect.

Review

5.—(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(2) 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).

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

17th January 2024