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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Environment Act 2021 (c. 30) inserted section 90A and Schedule 7A into the Town and Country Planning Act 1990 (c. 8) (biodiversity gain in England). This sets out that, subject to exceptions, every planning permission (for the development of land in England) is deemed to be granted subject to a new general condition. The condition requires a biodiversity gain plan to be submitted and approved by the planning authority before development can lawfully commence. The biodiversity gain plan should contain an assessment of the value of natural habitats before development and after development, and ensure that at least a 10% net gain is achieved between the earlier and later values.

These Regulations make amendments to the Town and Country Planning Act 1990 that are consequential on the provisions inserted by the Environment Act 2021 and regulations under that Act.

Part 2 (amendments related to the local planning authority: biodiversity gain in England) provides rules for determining the local planning authority for the purposes of Schedule 7A to the Town and Country Planning Act 1990 .

Part 3 amends section 73 of the Town and Country Planning Act 1990 (permission to develop land without compliance with conditions previously attached). It provides that if the conditions, subject to which permission is granted under section 73, do not change the effect of the development on onsite habitat which is irreplaceable habitat, a biodiversity gain plan which was previously approved is regarded as approved for the purpose of the permission granted under that section. If the conditions affect the post-development biodiversity value of the onsite habitat as specified in the earlier plan, that earlier plan will not be regarded as approved for the purpose of the permission granted under section 73.

Part 4 (appeals) amends sections 78, 284 and 336 of the Town and Country Planning Act 1990. Section 78 is amended to include a reference to the regulations that will contain the time period within which an appeal to the Secretary of State may be made in the absence of a determination whether to approve a biodiversity gain plan. Section 284 is amended such that the route to challenge a decision of the Secretary of State whether to approve the biodiversity gain plan will be to the High Court under section 288 (consistent with other planning decisions determined by the Secretary of State). Section 336 is amended to insert the definition of the biodiversity gain plan.

An Explanatory Memorandum has been published alongside these Regulations on [www.legislation.gov.uk](http://www.legislation.gov.uk). A full impact assessment of the effect of Biodiversity Net Gain on the costs of business, the voluntary and the public sector was published during passage of the Environment Act 2021 (under which this instrument has been made) and is available from the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.