
STATUTORY INSTRUMENTS

2024 No. 50

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

PART 2

**Modification of Application of Part 2 of Schedule 7A
to the 1990 Act: Development in Phases**

Interpretation

2. In this Part—

“the 1990 Act” means the Town and Country Planning Act 1990⁽¹⁾;

“post-development biodiversity value of the onsite habitat for a phase of development” and related expressions have the same meaning as “post-development biodiversity value of the onsite habitat” in paragraphs 8 and 9 of Schedule 7A to the 1990 Act (post-development biodiversity value) but as if references in those paragraphs to “the onsite habitat” were references to “the onsite habitat on the land to which the phase of development relates”.

Modification of application of Part 2 of Schedule 7A to the 1990 Act: development in phases

3. Part 2 of Schedule 7A to the 1990 Act (condition of planning permission relating to biodiversity gain)⁽²⁾ applies, with the modifications in regulations 4 to 8, 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;
- (b) the grant of any kind of planning permission⁽³⁾, where the grant is subject to conditions (whether requiring the subsequent approval of any matters or otherwise) having that effect.

Substitution of paragraph 13 (general condition of planning permission)

4. Part 2 of Schedule 7A to the 1990 Act applies as if for paragraph 13 there was substituted—

“**13.**—(1) The grant of planning permission of the type mentioned in paragraph 19(1)(a) or (b) for the development of land in England shall be deemed to have been granted subject to the conditions in sub-paragraphs (2) to (6).

(2) The conditions are that—

(1) 1990 c. 8.

(2) Part 2 of Schedule 7A to the Town and Country Planning Act 1990 was inserted by the Environment Act 2021.

(3) The term “planning permission” is defined in section 336(1) of the Town and Country Planning Act 1990, as amended by section 84(6) of, and Part 1 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34) and paragraphs 1 and 40(1) and (3) of Schedule 12 to the Housing and Planning Act 2016. It is prospectively amended by paragraphs 1 and 10(b) of Schedule 10 to the Levelling-up and Regeneration Act 2023 from a date and time to be appointed.

- (a) the development may not be begun unless the requirement in sub-paragraph (3) or (4) (overall plan) has been met,
- (b) no phase of development may be begun unless the requirement in sub-paragraph (5) or (6) (phase plan) has been met in respect of that phase, and
- (c) where permission has been granted on an application made under section 73(4) (determination of applications to develop land without compliance with conditions previously attached), no further development of a phase which has been begun may be carried out pursuant to that permission unless the requirement in sub-paragraph (5) or (6) has been met.

Overall plan

- (3) The requirement in this sub-paragraph has been met where—
 - (a) a biodiversity gain plan for that overall development has been submitted to the planning authority(5) (see modified paragraph 14), and
 - (b) the planning authority has approved that plan (see modified paragraph 15).
- (4) The requirement in this sub-paragraph has been met where—
 - (a) a biodiversity gain plan for the overall development has been approved for the purpose of complying with the condition in sub-paragraph (2)(a) subject to which planning permission for that overall development was previously granted,
 - (b) permission has been granted on an application made under section 73, and
 - (c) the earlier biodiversity gain plan for that overall development is regarded as approved under section 73(2C) and (2D) for the purpose of the permission granted under section 73.

Phase plan

- (5) The requirement in this sub-paragraph has been met where—
 - (a) a biodiversity gain plan for that phase has been submitted to the planning authority (see modified paragraph 14), and
 - (b) the planning authority has approved that plan (see modified paragraph 15).
- (6) The requirement in this sub-paragraph has been met where—
 - (a) permission has been granted on an application made under section 73, and
 - (b) an earlier biodiversity gain plan for that phase is regarded as approved under section 73(2C) and (2D) for the purpose of the permission granted under section 73.
- (7) In this Part—

“a section 73 case” means a case where the biodiversity gain plan is required to be submitted for the purpose of complying with a condition in sub-paragraph (2), subject to which permission has been granted on an application made under section 73 (determination of applications to develop land without complying with conditions previously attached).”.

(4) Section 73 was amended by sections 42(2) and 51(3) of, and Schedule 9 to, the Planning and Compulsory Purchase Act 2004, section 35(1) and (7) of the Planning (Wales) Act 2015, paragraphs 1 and 4 of Schedule 3 to the Neighbourhood Planning Act 2017 (c. 20), paragraph 3(1) and (5) of Schedule 14 to the Environment Act 2021, section 114(1) and (6) of the Levelling-up and Regeneration Act 2023 and [S.I. 2024/49](#).

(5) The term “planning authority” has the meaning given by paragraph 12(1) of Schedule 7A to the Town and Country Planning Act 1990.

Modification of paragraph 14 (biodiversity gain plan)

5. For the purposes of paragraph 13(3)(a) (overall plan) as modified by regulation 4, paragraph 14 applies as if—

- (a) in the heading, at the end there were inserted “: overall plan”;
- (b) for sub-paragraph (1) there were substituted—
 - “(1) For the purposes of paragraph 13(3)(a) (overall plan), a biodiversity gain plan is a plan which—
 - (a) relates to the development for which planning permission of the type mentioned in paragraph 19(1)(a) or (b) is granted, and
 - (b) subject to sub-paragraph (2A), specifies the matters referred to in sub-paragraph (2).”;
- (c) in sub-paragraph (2), for paragraphs (a) to (e) there were substituted—
 - “(a) information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat(6) and any other habitat,
 - (b) the pre-development biodiversity value(7) of the onsite habitat,
 - (c) any registered offsite biodiversity gain(8) allocated to the development before the date of submission of the biodiversity gain plan and the biodiversity value of that gain in relation to the development,
 - (d) any registered offsite biodiversity gain proposed to be allocated to the development and the biodiversity value of that gain in relation to the development,
 - (e) any biodiversity credits(9) purchased before the date of submission of the biodiversity gain plan,
 - (ea) any biodiversity credits proposed to be purchased for the development,
 - (eb) the post-development biodiversity value(10) of the onsite habitat for the overall development,
 - (ec) except in a section 73 case, the post-development biodiversity value of the onsite habitat for each phase of development,
 - (ed) in a section 73 case, the post-development biodiversity value of the onsite habitat for each phase of development (whether begun or otherwise), and”;
- (d) after sub-paragraph (2) there were inserted—
 - “(2A) Where the onsite habitat of any part of a development is irreplaceable habitat(11)—
 - (a) the words “and any other habitat” in sub-paragraph (2)(a), and
 - (b) sub-paragraph (2)(c), (d), (e) and (ea),

(6) The term “onsite habitat” has the meaning given by paragraph 12(1) of Schedule 7A to the Town and Country Planning Act 1990.

(7) The term “pre-development biodiversity value” has the meaning given by paragraph 5 of Schedule 7A to the Town and Country Planning Act 1990, as amended by section 135(b) of the Levelling-up and Regeneration Act 2023.

(8) The term “registered offsite biodiversity gain” has the meaning given by paragraph 10 of Schedule 7A to the Town and Country Planning Act 1990, as amended by section 135(c) of the Levelling-up and Regeneration Act 2023.

(9) The term “biodiversity credits” has the meaning given by paragraph 11 of Schedule 7A to the Town and Country Planning Act 1990.

(10) The term “post-development biodiversity value” has the meaning given by paragraph 8 of Schedule 7A to the Town and Country Planning Act 1990.

(11) “Irreplaceable habitat” is defined for the purposes of Part 2 of Schedule 7A to the Town and Country Planning Act 1990 by regulation 2 of S.I. 2024/48.

do not apply in relation to that part of the development.”.

6. For the purposes of paragraph 13(5)(a) (phase plan) as modified by regulation 4, paragraph 14 applies as if—

- (a) in the heading, at the end there were inserted “: phase plan”;
- (b) for sub-paragraph (1) there were substituted—
 - “(1) For the purposes of paragraph 13(5)(a) (phase plan), a biodiversity gain plan is a plan which—
 - (a) relates to a phase of the development, where planning permission of the type mentioned in paragraph 19(1)(a) or (b) is granted for the development, and
 - (b) subject to sub-paragraph (2A), specifies the matters referred to in sub-paragraph (2).”;
- (c) in sub-paragraph (2), for paragraphs (a) to (e) there were substituted—
 - “(a) the post-development biodiversity value of the onsite habitat for the phase of the development to which the biodiversity gain plan relates,
 - (b) the post-development biodiversity value of the onsite habitat for each other phase of development (whether begun or otherwise),
 - (c) any registered offsite biodiversity gain allocated to the development before the date of submission of the biodiversity gain plan and the biodiversity value of that gain in relation to the development,
 - (d) any registered offsite biodiversity gain which is proposed to be allocated to the development and the biodiversity value of that gain in relation to the development,
 - (e) any biodiversity credits purchased for the development before the date of submission of the biodiversity gain plan,
 - (ea) any biodiversity credits proposed to be purchased for the development, and”;
- (d) after sub-paragraph (2) there were inserted—
 - “(2A) Where the onsite habitat of any part of a development is irreplaceable habitat, sub-paragraph (2)(c) to (ea) does not apply in relation to that part of the development.”.

Modification of paragraph 15 (approval of biodiversity gain plan)

7. For the purposes of paragraph 13(3)(a) (overall plan) as modified by regulation 4, paragraph 15 applies as if—

- (a) in the heading, for “biodiversity gain” there were substituted “overall”;
- (b) for sub-paragraph (1) there were substituted—
 - “(1) For the purposes of paragraph 13(3)(a) (overall plan), a planning authority to which a biodiversity gain plan is submitted must approve the plan if, and only if, it is satisfied as to the matters specified in sub-paragraph (2).”;
- (c) in sub-paragraph (2), for paragraphs (a) to (e) there were substituted—
 - “(a) that the pre-development biodiversity value of the onsite habitat is as specified in the plan,
 - (b) where the onsite habitat of any part of a development is irreplaceable habitat, 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,

- (c) except in a section 73 case, and subject to sub-paragraph (3), that the biodiversity gain objective will be met, taking into account—
 - (i) the post-development biodiversity value of the onsite habitat for the overall development,
 - (ii) the post-development biodiversity value of the onsite habitat for each phase of the development,
 - (iii) the biodiversity value in relation to the development of any registered offsite biodiversity gain allocated or proposed to be allocated to the development (and, if the allocation is conditional, whether any conditions have been met or will be met by the time development begins), and
 - (iv) any biodiversity credits purchased or proposed to be purchased for the development,
 - (d) in a section 73 case, and subject to sub-paragraph (3), that the biodiversity gain objective will be met, taking into account—
 - (i) the post-development biodiversity value of the onsite habitat for the overall development,
 - (ii) the post-development biodiversity value of the onsite habitat for each phase of the development (whether begun or otherwise),
 - (iii) the biodiversity value in relation to the development of any registered offsite biodiversity gain allocated or proposed to be allocated to the development (and, if the allocation is conditional, whether any conditions have been met or will be met by the time development begins), and
 - (iv) any biodiversity credits purchased or proposed to be purchased for the development,
 - (e) subject to sub-paragraph (3), that—
 - (i) any biodiversity credits specified in the biodiversity gain plan as having been purchased for the development before the date of submission of that plan have been so purchased,
 - (ii) in a case where any registered offsite biodiversity gain is specified in the biodiversity gain plan as having been allocated to the development before the date of submission of that plan, that the registered offsite biodiversity gain—
 - (aa) is so allocated, and
 - (bb) has the value specified in the biodiversity gain plan in relation to the development, and
 - (ea) in a section 73 case, that the post-development biodiversity value of the onsite habitat of any phases that have been begun is at least the value specified in the plan most recently approved for that phase, unless the conditions subject to which planning permission has been granted under section 73 affect the post-development biodiversity value of the onsite habitat as specified in that biodiversity gain plan, and”;
- (d) after sub-paragraph (2) there were inserted—
- “(3) Where the onsite habitat of any part of a development is irreplaceable habitat, sub-paragraph (2)(c)(iii) and (iv), (d)(iii) and (iv), or (e) as the case may be, does not apply in relation to that part of the development.

(4) For the purposes of sub-paragraph (2)(b), 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.”.

8. For the purposes of paragraph 13(5)(a) (phase plan) as modified by regulation 4, paragraph 15 applies as if—

- (a) in the heading, for “biodiversity gain” there were substituted “phase”;
- (b) for sub-paragraph (1) there were substituted—

“(1) For the purposes of paragraph 13(5)(a) (phase plan), a planning authority to which a biodiversity gain plan is submitted must approve the plan if, and only if, it is satisfied as to the matters specified in sub-paragraph (2).”;

- (c) in sub-paragraph (2), for paragraphs (a) to (e) there were substituted—

- “(a) that the post-development biodiversity value of the onsite habitat for the phase of the development to which the biodiversity gain plan relates is at least the value specified in the plan required under regulation 13(5)(a) (phase plan),
- (b) that the post-development biodiversity value of the onsite habitat for any phase which has been begun is at least the value specified in the biodiversity gain plan most recently approved for that phase, unless in a section 73 case the conditions subject to which planning permission has been granted under section 73 affect the post-development biodiversity value of the onsite habitat as specified in that biodiversity gain plan,
- (c) subject to sub-paragraph (3), in a case where any registered offsite biodiversity gain is specified in the biodiversity gain plan as having been allocated to the development before the date of submission of that plan, that—
 - (i) the registered offsite biodiversity gain is so allocated, and
 - (ii) the biodiversity value of that gain in relation to the development is as specified in the biodiversity gain plan,
- (d) subject to sub-paragraph (3), that any biodiversity credits specified in the biodiversity gain plan as having been purchased for the development before the date of submission of that plan have been so purchased,
- (e) where the onsite habitat of a part of the development to which the biodiversity gain plan for the phase relates is irreplaceable habitat, that, having regard to the biodiversity gain plan for the overall development, 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,
- (ea) that the biodiversity gain objective will be met for the development, taking into account—
 - (i) the post-development biodiversity value of the onsite habitat for the overall development,
 - (ii) the post-development biodiversity value of the onsite habitat for each phase of the development (whether begun or otherwise),
 - (iii) the biodiversity value in relation to the development of any registered offsite biodiversity gain allocated and proposed to be allocated to the development, and
 - (iv) any biodiversity credits purchased and proposed to be purchased for the development, and”;

(d) after sub-paragraph (2), there were inserted—

“(3) Where the onsite habitat of any part of the phase of development is irreplaceable habitat, sub-paragraph (2)(c) and (d) do not apply in relation to that part of the phase of development.

(4) 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.”.