

2024 No. 50

ENVIRONMENTAL PROTECTION, ENGLAND

TOWN AND COUNTRY PLANNING, ENGLAND

**The Biodiversity Gain (Town and Country Planning)
(Modifications and Amendments) (England) 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 in sections 59(2)(b), 62(1) and (2), 69, 74(1)(d), 76C(2), 333(2A) and (7) of, and paragraphs 14(2)(f) and (3), 16, 18 and 19 of Schedule 7A to, the Town and Country Planning Act 1990(a) and section 142(1) of the Environment Act 2021(b).

PART 1

Introduction

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024.

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

(3) These Regulations extend to England and Wales.

(a) 1990 c. 8. Section 59 was amended by paragraphs 1 and 4 of Schedule 1 to the Growth and Infrastructure Act 2013 (c. 27) and by paragraphs 1 and 3 of Schedule 4 to the Planning (Wales) Act 2015 (2015 anaw 4). Section 62 was substituted by section 42(1) of the Planning and Compulsory Purchase Act 2004 (c. 5) and subsection (1) was amended by paragraphs 1 and 8(1) of Schedule 12 to the Housing and Planning Act 2016 (c. 22). Section 69 was substituted by paragraphs 1 and 3 of Schedule 6 to the Planning and Compulsory Purchase Act 2004, and was amended by section 190(1) and (4) of the Planning Act 2008 (c. 29), paragraphs 1 and 7 of Schedule 12 and Part 18 of Schedule 25 to the Localism Act 2011 (c. 20), paragraphs 2 and 8 of Schedule 4 to the Infrastructure Act 2015 (c. 7), paragraphs 1 and 10 of Schedule 12 to the Housing and Planning Act 2016, paragraph 3(1) and (3) of Schedule 14 to the Environment Act 2021 (c. 30), sections 111(1) and (4) and 114(1) and (4) of the Levelling-up and Regeneration Act 2023 (c. 55), and S.I. 2017/276. Section 69 is prospectively amended by paragraph 1(8) of Schedule 9 to the Levelling-up and Regeneration Act 2023 from a date and time to be appointed. Section 74(1)(d) was amended by paragraphs 1 and 17(1) and (2)(b) of Schedule 12 to the Housing and Planning Act 2016. See section 336(1) for the meaning of “prescribed” in sections 69 and 74(1)(d). Section 76C was inserted by paragraphs 1 and 5 of Schedule 1 to the Growth and Infrastructure Act 2013 and subsection (2) was amended by paragraph 3(1) and (7) of Schedule 14 to the Environment Act 2021. Section 333(2A) was inserted paragraphs 1 and 14 of Schedule 6 to the Planning and Compulsory Purchase Act 2004. Schedule 7A was inserted by paragraph 2 of Schedule 14 to the Environment Act 2021.

(b) 2021 c. 30.

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(a);

“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)(b) 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(c), 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—

- (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(d) (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—

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- (a) 1990 c. 8.
 - (b) Part 2 of Schedule 7A to the Town and Country Planning Act 1990 was inserted by the Environment Act 2021.
 - (c) 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.
 - (d) 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.

- (a) a biodiversity gain plan for that overall development has been submitted to the planning authority^(a) (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).”.

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^(b) and any other habitat,

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

- (b) the pre-development biodiversity value^(a) of the onsite habitat,
- (c) any registered offsite biodiversity gain^(b) 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^(c) 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^(d) 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^(e)—
 - (a) the words “and any other habitat” in sub-paragraph (2)(a), and
 - (b) sub-paragraph (2)(c), (d), (e) and (ea),
 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,

(a) 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.

(b) 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.

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

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

(e) “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.

- (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.”.

PART 3

Amendments to the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013

Amendments to the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013

9. The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013(a) is amended in accordance with regulations 10 to 12.

10. In article 2 (interpretation) after the definition of “infrastructure manager”, insert—

““irreplaceable habitat” has the meaning given by regulation 2 of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024(b);”.

11. In article 4 (applications for planning permission)—

(a) in paragraph (1)(c)—

(i) in paragraph (i)—

(aa) omit the “and” after sub-paragraph (bb);

(bb) after sub-paragraph (cc) but before the “or” which follows it, insert—

“(dd) the information relating to the condition under paragraph 13 of Schedule 7A to the 1990 Act (“the biodiversity gain condition”) specified in paragraph (1A);”;

(ii) in paragraph (ii) for “(cc)” substitute “(dd)”;

(b) after paragraph (1) insert—

(a) S.I. 2013/2140; relevant amending instruments are S.I. 2014/1532, 2015/797, 2016/944, 2017/571, 2018/119 and 2021/746.

(b) S.I. 2124/48.

“(1A) A relevant application(a) for planning permission must be accompanied by the following information relating to the biodiversity gain condition—

- (a) a statement as to whether the applicant believes that planning permission, if granted, would be subject to the biodiversity gain condition;
- (b) where the applicant believes that planning permission, if granted, would not be subject to the biodiversity gain condition, the reasons for that belief;
- (c) in cases where the applicant believes that planning permission, if granted, would be subject to the biodiversity gain condition—
 - (i) the completed biodiversity metric calculation tool or tools (as the case may be)(b) showing the calculation of the biodiversity value of the onsite habitat, for the purpose of the biodiversity gain plan required to be submitted under paragraph 13 of Schedule 7A to the 1990 Act if permission is granted, on—
 - (aa) the date of the application, or
 - (bb) an earlier date proposed by the applicant(c), and
 - (cc) the date immediately before any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act(d) have been carried out on the land;
 - (ii) the biodiversity value or values (as the case may be) referred to in paragraph (i);
 - (iii) the publication date of the biodiversity metric calculation tool or tools (as the case may be) used to calculate the values referred to in paragraph (i);
 - (iv) if an earlier date is proposed by the applicant under paragraph (i)(bb), the reasons why that earlier date is proposed;
 - (v) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—
 - (aa) a statement that such activities have been carried out,
 - (bb) confirmation of the date immediately before those activities were so carried out, and
 - (cc) any available supporting evidence for the date referred to in subparagraph (bb) and for the value referred to in paragraph (i)(cc).
 - (vi) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (aa) is on the land to which the application relates, and
 - (bb) exists on the date referred to in paragraph (i)(aa) or (bb) (as applicable);
 - (vii) a plan showing the location, on the date referred to in paragraph (i)(aa) or (bb) (as applicable), of—

(a) See article 2(1) of S.I. 2013/2140, by virtue of which “relevant application” has the same meaning as in section 62A of the Town and Country Planning Act 1990. Section 62A was inserted by section 1(1) of the Growth and Infrastructure Act 2013, and amended by section 153(1) of the Housing and Planning Act 2016 and section 110(1) and (3)(a) of the Levelling-up and Regeneration Act 2023.

(b) The term “biodiversity metric” has the meaning given by paragraph 4 of Schedule 7A to the Town and Country Planning Act 1990. The biodiversity metric is available online at <https://www.gov.uk/government/publications/statutory-biodiversity-metric-tools-and-guides> and hard copies may be obtained from the Department for the Environment, Food and Rural Affairs, 2 Marsham Street, London, SW1P 4DF. The biodiversity metric may be revised and republished from time to time under paragraph 4(3) of Schedule 7A.

(c) Paragraph 5(3) of Schedule 7A to the Town and Country Planning Act 1990 provides that a person submitting a biodiversity gain plan for approval and the planning authority may agree that the date on which the pre-development biodiversity value of the onsite habitat is to be assessed is a date earlier than the date of the application (but not a date before the day on which Schedule 7A comes into force in relation to the development).

(d) Paragraph 6A of Schedule 7A was inserted by section 135(b) of the Levelling-up and Regeneration Act 2023.

- (aa) the onsite habitat included in the calculations referred to in paragraph (i), and
- (bb) any irreplaceable habitat.”;
- (c) in paragraph (2), after “required to be provided by paragraph (1)” insert “or paragraph (1A)”.

12. In article 24 (contents of the decision notice)—

- (a) in paragraph (1), before sub-paragraph (a) insert—
 - “(za) where planning permission is granted, the notice must include—
 - (i) information relating to the condition in paragraph 13 of Schedule 7A to the 1990 Act (biodiversity gain condition) including that there are exemptions, transitional provisions and requirements relating to irreplaceable habitat,
 - (ii) information to note the effect of section 73(2D) of the 1990 Act (earlier biodiversity gain plan in relation to a previous planning permission regarded as approved for purposes of paragraph 13 of Schedule 7A),
 - (iii) details of the planning authority under paragraph 12(1) of Schedule 7A to the 1990 Act (biodiversity gain in England), and
 - (iv) where development is to proceed in phases and the modifications in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply, a statement to that effect and to the effect that biodiversity gain plans are required before development may be begun and required before each phase of development may be begun;”
- (b) after paragraph (1), insert—
 - “(1A) References in paragraph (1)(a) to a condition do not include a condition under paragraph 13 of Schedule 7A to the 1990 Act (the biodiversity gain condition).”.

PART 4

Amendments to the Town and Country Planning (Development Management Procedure) (England) Order 2015

13. The Town and Country Planning (Development Management Procedure) (England) Order 2015(a) is amended in accordance with regulations 14 to 20.

14. In article 2 (interpretation) after the definition of “infrastructure manager”, insert—

““irreplaceable habitat” has the meaning given by regulation 2 of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024;”.

15. In article 7 (general requirements: applications for planning permission including outline planning permission)—

- (a) in paragraph (1), after sub-paragraph (c)(ii), insert—
 - “(iia) the information relating to the condition under paragraph 13 of Schedule 7A to the 1990 Act (“the biodiversity gain condition”) specified in paragraph (1A);”;
- (b) after paragraph (1) insert—
 - “(1A) Subject to paragraph (1B), an application for planning permission must be accompanied by the following information relating to the biodiversity gain condition—

(a) S.I. 2015/595; relevant amending instruments are S.I. 2017/402, 571, 1013, 2018/119, 2020/505 and 2021/746.

- (a) a statement as to whether the applicant believes that planning permission, if granted, would be subject to the biodiversity gain condition;
- (b) where the applicant believes that planning permission, if granted, would not be subject to the biodiversity gain condition, the reasons for that belief;
- (c) in cases where the applicant believes that planning permission, if granted, would be subject to the biodiversity gain condition—
 - (i) the completed biodiversity metric calculation tool or tools (as the case may be) showing the calculation of the biodiversity value of the onsite habitat, for the purpose of the biodiversity gain plan required to be submitted under paragraph 13 of Schedule 7A to the 1990 Act if permission is granted, on—
 - (aa) the date of the application, or
 - (bb) an earlier date proposed by the applicant, and
 - (cc) in either case, the date immediately before any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land;
 - (ii) the biodiversity value or values (as the case may be) referred to in paragraph (i);
 - (iii) the publication date of the biodiversity metric calculation tool or tools (as the case may be) used to calculate the values referred to in paragraph (i);
 - (iv) if an earlier date is proposed by the applicant under paragraph (i)(bb), the reasons why that earlier date is proposed;
 - (v) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—
 - (aa) a statement that such activities have been carried out,
 - (bb) confirmation of the date immediately before those activities were so carried out, and
 - (cc) any available supporting evidence for the date referred to in subparagraph (bb) and for the value referred to in paragraph (i)(cc).
 - (vi) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (aa) is on the land to which the application relates, and
 - (bb) exists on the date referred to in paragraph (i)(aa) or (bb) (as applicable);
 - (vii) a plan showing the location, on the date referred to in paragraph (i)(aa) or (bb) (as applicable), of—
 - (aa) the onsite habitat included in the calculations referred to in paragraph (i), and
 - (bb) any irreplaceable habitat.

(1B) Paragraph (1A) does not apply to an application for permission to develop land without compliance with conditions previously attached made under section 73 of the 1990 Act.”;

- (c) in paragraph (2), for “(1)(c)(i) or (ii)” substitute “(1) or (1A)”.

16. In article 27 (applications made under a planning condition), after paragraph (3) insert—

“(4) Part 7A applies, and paragraphs (1) and (2) do not apply, to the submission of a biodiversity gain plan for approval under—

- (a) paragraph 13(2)(a) of Schedule 7A to the 1990 Act, or
- (b) paragraph 13(3)(a) or (5)(a) of Schedule 7A to the 1990 Act as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024.”.

17. In article 35 (written notice of decision or determination relating to a planning application)—

(a) in paragraph (1), before sub-paragraph (a), insert—

“(za) where planning permission is granted, the notice must include—

- (i) information relating to the condition in paragraph 13 of Schedule 7A to the 1990 Act (biodiversity gain condition) including that there are exemptions, transitional arrangements and requirements relating to irreplaceable habitat,
 - (ii) information to note the effect of section 73(2D) of the 1990 Act (earlier biodiversity gain plan in relation to a previous planning permission regarded as approved for purposes of paragraph 13 of Schedule 7A),
 - (iii) details of the planning authority under paragraph 12(1) of Schedule 7A (biodiversity gain in England), and
 - (iv) where development is to proceed in phases and the modifications in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply, a statement to that effect and to the effect that biodiversity gain plans are required before development may be begun and required before each phase of development may be begun;”
- ;

(b) after paragraph 1, insert—

“(1A) References in paragraph (1)(a) to a condition do not include a condition under paragraph 13 of Schedule 7A (the biodiversity gain condition).”.

18. In article 37 (appeals) at the beginning insert—

“(A1) This article does not apply to an appeal to the Secretary of State under section 78 of the 1990 Act(a) for not approving or not determining a biodiversity gain plan (see Part 7A, article 37E).”.

19. After Part 7 (appeals) insert—

“PART 7A

Biodiversity Gain Plan

Meaning of biodiversity gain hierarchy

37A. In this Part, “biodiversity gain hierarchy” means the following actions in the following order of priority—

- (a) in relation to onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than four—
 - (i) avoiding adverse effects of the development, or
 - (ii) insofar as those adverse effects cannot be avoided, mitigating those effects;
- (b) in relation to any onsite habitat which is adversely affected by the development, compensating for that adverse effect by—
 - (i) habitat enhancement(a) of onsite habitat;

(a) Section 78 was amended by section 17(2) of the Planning and Compulsory Purchase Act 1991, section 121(1), (2)(b), (3A) and (3B) of the Planning and Compulsory Purchase Act 2004, Paragraphs 1 and 3(a) and (b) of Schedule 10 and paragraphs 1 and 2 of Schedule 11 to the Planning and Compulsory Purchase Act 2008, section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011, paragraphs 2 and 12 of Part 2 of Schedule 4 to the Infrastructure Act 2015, sections 45 and 47(1) of, and paragraph 7(1) and (2) of Schedule 7 to, the Planning (Wales) Act 2015, paragraphs 1 and 12 of Schedule 12 to the Housing and Planning Act 2016, and S.I. 2014/2773. Section 78 is prospectively amended by section 113(1) and (5) of, and paragraph 1(1) and (12) of Schedule 9 to, the Levelling-up and Regeneration Act 2023 from a date and time to be appointed.

- (ii) insofar as there cannot be that enhancement, creation of onsite habitat;
- (iii) insofar as there cannot be that creation, the availability of registered offsite biodiversity gain for allocation to the development;
- (iv) insofar as registered offsite biodiversity gain cannot be allocated to the development, the purchase of biodiversity credits.

Form and timing of submission

37B. A biodiversity gain plan submitted to a planning authority must be submitted—

- (a) in writing;
- (b) no earlier than the day after the day on which formal notification is given of the decision to grant planning permission.

Additional content of plan

37C.—(1) In addition to the matters referred to in paragraph 14(2) of Schedule 7A to the 1990 Act (biodiversity gain plan), and for the purposes of paragraph 14(3) of Schedule 7A to the 1990 Act (others matters to be included), a biodiversity gain plan must include the matters referred to in paragraphs (2) to (5).

(2) A biodiversity gain plan must include—

- (a) the name and address of—
 - (i) the person completing, and
 - (ii) if different, the person submitting, the plan;
- (b) the reference number of the planning permission to which the plan relates;
- (c) a description of the development to which the plan relates;
- (d) a description of arrangements for maintenance of habitat enhancement to which paragraph 9(3) of Schedule 7A to the 1990 Act applies (habitat enhancement which must be maintained for at least 30 years after the development is completed) and arrangements for monitoring that maintenance;
- (e) subject to paragraph (3), a description of the actions to be taken for the purpose of applying the biodiversity gain hierarchy, including any reasons for not following the order of priority.

(3) Paragraph (2)(e) does not apply in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat.

(4) Where development is not to proceed in phases, the biodiversity gain plan must also include—

- (a) the relevant date, and if the relevant date is a date which is earlier than that specified in paragraph 5(2)(a) of Schedule 7A to the 1990 Act, the reasons for this;
- (b) the completed biodiversity metric calculation tool or tools (as the case may be), stating the publication date of that tool and showing how the values specified in the biodiversity gain plan have been calculated;
- (c) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—
 - (i) a statement that such activities have been carried out;
 - (ii) confirmation of the date immediately before those activities were so carried out;

(a) The term “habitat enhancement” has the meaning given by paragraph 12(2) of Schedule 7A to the Town and Country Planning Act 1990.

- (iii) a completed biodiversity metric calculation tool, stating the publication date of that tool and showing the calculation of the biodiversity value of the onsite habitat on that date; and
 - (iv) any available supporting evidence for the date referred to in paragraph (ii) and for the value referred to in paragraph (iii);
 - (d) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (i) is on the land to which the plan relates, and
 - (ii) exists on the relevant date;
 - (e) pre-development plans—
 - (i) showing the location of onsite habitat including any irreplaceable habitat on the relevant date;
 - (ii) drawn to an identified scale and showing the direction of North;
 - (f) post-development plans—
 - (i) showing the location of onsite habitat including any irreplaceable habitat;
 - (ii) drawn to an identified scale and showing the direction of North;
 - (g) in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat, arrangements for compensation for any impact the development has on the biodiversity of the onsite habitat.
- (5) Where development is to proceed in phases—
- (a) the biodiversity gain plan required before development may be begun in accordance with paragraph 13(3)(a) of the 1990 Act (as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024) (overall plan) must also include—
 - (i) the relevant date, and if the relevant date is a date which is earlier than that specified in paragraph 5(2)(a) of Schedule 7A to the 1990 Act, the reasons for this;
 - (ii) the completed biodiversity metric calculation tool or tools (as the case may be), stating the publication date of that tool and showing how the values specified in that biodiversity gain plan have been calculated;
 - (iii) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—
 - (aa) statement that such activities have been carried out,
 - (bb) confirmation of the date immediately before those activities were so carried out,
 - (cc) a completed biodiversity metric calculation tool, stating the publication date of that tool and showing the calculation of the biodiversity value of the onsite habitat on that date, and
 - (dd) any available supporting evidence for the date referred to in sub-paragraph (bb) and for the value referred to in sub-paragraph (cc);
 - (iv) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (aa) is on the land to which the plan relates, and
 - (bb) exists on the relevant date;
 - (v) pre-development plans—

- (aa) showing the location of onsite habitat including any irreplaceable habitat on the relevant date;
 - (bb) drawn to an identified scale and showing the direction of North;
- (vi) in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat, arrangements for compensation for any impact the development has on the biodiversity of the onsite habitat;
- (b) the biodiversity gain plan for a phase of development required in accordance with paragraph 13(5)(a) of the 1990 Act (as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024) (phase plan) must also include—
 - (i) the reference number of any planning permission decision, other than the planning permission to which the biodiversity gain plan relates, which the person submitting the plan considers is relevant to the phase of development;
 - (ii) the completed biodiversity metric calculation tool or tools (as the case may be), stating the publication date of that tool and showing how the values specified in that biodiversity gain plan have been calculated;
 - (iii) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (aa) is on the land to which the plan relates, and
 - (bb) exists on the relevant date;
 - (iv) post-development plans for the phase of development—
 - (aa) showing the location of onsite habitat including any irreplaceable habitat;
 - (bb) drawn to an identified scale and showing the direction of North;
 - (v) information about the steps taken or to be taken to minimise the adverse effect of the phase of development on the biodiversity of the onsite habitat;
 - (vi) in relation to any part of the development to which the biodiversity gain plan relates where the onsite habitat of that part is irreplaceable habitat, arrangements for compensation for any impact the development has on the biodiversity of the onsite habitat.
- (6) In this article—
 - (a) “post-development biodiversity value of the onsite habitat of the 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”;
 - (b) a reference to a development proceeding in phases is a reference to a development where—
 - (i) outline planning permission has been granted and the reservation of matters for subsequent approval has the effect of requiring or permitting development to proceed in phases, or
 - (ii) any kind of planning permission has been granted and the grant is subject to conditions (whether requiring the subsequent approval of other matters or otherwise) having that effect.

Determination

37D.—(1) The planning authority must give written notice to the person submitting the biodiversity gain plan of its determination whether to approve that plan within—

- (a) the period of eight weeks beginning with the day after the day on which that plan is received by the planning authority, or
- (b) such longer period as is agreed, in writing, by the person submitting that plan and the planning authority.

(2) In determining whether to approve a biodiversity gain plan, the planning authority must take into account—

- (a) how the biodiversity gain hierarchy is to be applied, and
- (b) subject to paragraph (3), where the order of priority specified in that hierarchy is not to be applied—
 - (i) the reason for that, or
 - (ii) the absence of a reason.

(3) Paragraph (2) does not apply in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat.

(4) Where the planning authority that has given written notice under paragraph (1) is not the local planning register authority, the planning authority must, within five working days beginning with the day after the day of that written notice, send to the local planning register authority—

- (a) a copy of the biodiversity gain plan submitted under paragraph 13 of Schedule 7A to the 1990 Act, including all plans, drawings and other documents submitted with the biodiversity gain plan;
- (b) notice of the determination whether to approve the biodiversity gain plan including the date of that notice and the name of the planning authority.

(5) Where the planning authority makes a determination not to approve the biodiversity gain plan, the notice provided under paragraph (1) must state clearly and precisely their full reasons for the determination, specifying all elements of the biodiversity gain plan which are relevant to the determination.

(6) In this article—

“the local planning register authority” has the same meaning as in article 40(1);

“working day” means a day which is not a Saturday, Sunday or public holiday.

Appeals

37E.—(1) This article applies where a local planning authority—

- (a) makes a determination not to approve a biodiversity gain plan, or
- (b) does not give written notice of its determination whether to approve a biodiversity gain plan within the period required under article 37D(1).

(2) Where this article applies, a person who has submitted a biodiversity gain plan who wishes to appeal to the Secretary of State under section 78 of the 1990 Act must give notice of appeal to the Secretary of State by—

- (a) serving on the Secretary of State within—
 - (i) the time limit specified in paragraph (3), or
 - (ii) such longer period as the Secretary of State may, at any time, allow,

- a completed appeal form, obtained from the Secretary of State^(a), together with such of the documents specified in paragraph (4) as are relevant to the appeal, and
- (b) serving on the planning authority referred to in paragraph (1) a copy of the completed appeal form mentioned in sub-paragraph (a), as soon as reasonably practicable, together with a copy of the documents mentioned in paragraph (4)(f) where that paragraph applies.
- (3) The time limit mentioned in paragraph (2) is six months from—
- (a) the date of the notice of the determination not to approve the biodiversity gain plan giving rise to the appeal, or
- (b) where no such notice has been given, the expiry of the period specified under article 37D(1)(a) or (b), as the case may be.
- (4) The documents mentioned in paragraph (2) are—
- (a) a copy of the application for planning permission sent to the local planning authority, to which the biodiversity gain plan relates;
- (b) all plans, drawings and other documents sent to the local planning authority relating to that application;
- (c) all correspondence with the local planning authority relating to the determination whether to approve the biodiversity gain plan;
- (d) the notice of the determination not to approve the biodiversity gain plan, if any;
- (e) the biodiversity gain plan;
- (f) subject to paragraph (5)—
- (i) the full statement of case of the person who submitted the biodiversity gain plan (if they wish to make additional representations);
- (ii) a statement of which procedure (written representations, a hearing or inquiry) the person who submitted the biodiversity gain plan considers should be used to determine the appeal;
- (iii) a draft statement of common ground if the person submitting the biodiversity gain plan considers that the appeal should be determined through a hearing or an inquiry.
- (5) The documents required in paragraph (4)(f) are not required to accompany the notice under paragraph (2) where a direction is given by the Secretary of State under section 321(3) of the 1990 Act (matters related to national security).
- (6) The Secretary of State may refuse to accept a notice of appeal from the person who submitted the biodiversity gain plan if the completed appeal form required under paragraph (2)(a) and the documents required under paragraph (4) are not served on the Secretary of State within the time limit specified in paragraph (3).
- (7) The Secretary of State may provide, or arrange for the provision of, a website for use for such purposes as the Secretary of State thinks fit which—
- (a) relate to appeals under section 78 of the 1990 Act and this article, and
- (b) are capable of being carried out electronically.
- (8) Where a person gives notice of appeal to the Secretary of State using electronic communications, the person is taken to have agreed—
- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically,

(a) Hard copies of the appeal form may be obtained from the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

- (b) that the person’s address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the person’s notice of appeal, and
- (c) that the person’s deemed agreement under this paragraph subsists until notice is given in accordance with article 46 that the person wishes to revoke the agreement.

(9) In this article, “draft statement of common ground” and “full statement of case” have the same meaning as in article 37(8) (appeals).”.

20. In article 40 (register of applications)—

- (a) at the end of the heading insert “and biodiversity gain plans”;
- (b) after paragraph (4), insert—

“(4ZA) Part 2 of the register must contain, in respect of every planning permission granted relating to the local planning register authority’s area—

- (a) a copy of all the biodiversity gain plans submitted under paragraph 13 of Schedule 7A to the 1990 Act;
- (b) notice of the determination whether to approve each biodiversity gain plan including the date of that notice and the name of the planning authority.

(4ZB) Where the local planning register authority is not the planning authority in respect of a biodiversity gain plan, the requirement in paragraph (4ZA) only applies where the planning authority has sent the information required to the local planning register authority in accordance with article 37D(4).”.

PART 5

Review

Requirement to carry out a review of the regulatory provision made by these Regulations

21.—(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 that review.

(2) The first report must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

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

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(a) requires that a report published under this article 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).

(a) 2015 c. 26.

Signed by authority of the Secretary of State for Levelling Up, Housing and Communities

Lee Rowley

Minister of State for Housing and Planning

17th January 2024

Department for Levelling Up, Housing and Communities

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). They set 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 be begun. The biodiversity gain plan must 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.

Part 2 of these Regulations modifies Part 2 of Schedule 7A the Town and Country Planning Act 1990. It does this for (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; and for (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 same effect. Regulation 4 modifies the condition subject to which planning permission is deemed to have been granted relating to biodiversity gain (the biodiversity gain condition) so that biodiversity gain plans are required before development begins for the overall development and for each phase of development. Regulations 5 and 6 modify the meaning of the biodiversity gain plan to provide for biodiversity gain plans which are required for the overall development and for each phase of development, and to set out the matters to be specified in those plans. Regulations 7 and 8 modify the provision for approval of such plans.

Part 3 amends the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 (S.I. 2013/2140) and Part 4 amends the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595). The amendments provide that relevant applications for planning permission must be accompanied by specified information relating to the biodiversity gain condition. The Orders are further amended to make provision for decision notices on the grant of permission to include information relevant to the biodiversity gain condition and for planning registers to include biodiversity gain plan information.

Regulation 19 inserts a new Part 7A into S.I. 2015/595 to provide for form, timing, additional content, determination and appeals against refusal, or non-determination, of the biodiversity gain plan.

An Explanatory Memorandum has been published alongside these Regulations on www.legislation.gov.uk. A full impact assessment of the effect that this instrument will have on the costs of business, the voluntary and the public sector is available from the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

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