

2024 No.

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>Laid before Parliament</i>		***
<i>Coming into force</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)(e), 76C(2), 333(2A), (2B) 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 [*****] 2024.

(3) These Regulations extend to England and Wales.

(a) 1990 c. 8. Section 59 was amended by the Planning (Wales) Act 2015 (2015 anaw 4). Sections 62 and 69 were substituted by the Planning and Compulsory Purchase Act 2004 (c. 5) and amended by the Housing and Planning Act 2016 (c. 22); other relevant amendments to section 69 are by the Planning Act 2008 (c. 29) and the Environment Act 2021 (c. 30). Section 74(1)(d) was amended by the Housing and Planning Act 2021. Section 333(2A) was inserted by the Planning and Compulsory Purchase Act 2004 (c. 5) and subsection (2B) of that section was inserted by the Levelling-up and Regeneration Act 2023 (c. 55). Schedule 7A was inserted by 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 of 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-paragraph (2).

(2) The conditions are that—

Overall plan

- (a) the development may not be begun unless—
 - (i) a biodiversity gain plan has been submitted to the planning authority(d) (see modified paragraph 14), and
 - (ii) the planning authority has approved the plan (see modified paragraph 15);

Phase plan

- (b) the first and each subsequent phase of development may not be begun unless—
 - (i) a biodiversity gain plan for that phase has been submitted to the planning authority (see modified paragraph 14), and
 - (ii) the planning authority has approved that plan (see modified paragraph 15).”.

Modification of paragraph 14 (biodiversity gain plan)

5. For the purposes of paragraph 13(2)(a)(i) (overall plan), paragraph 14 applies as if—

(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.

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

- (a) for sub-paragraphs (1) and (2)(a) to (e) there were substituted—

“Biodiversity gain plan: overall plan

14.—(1) For the purposes of paragraph 13(2)(a)(i) (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).

(2) The matters are—

- (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^(a) and any other habitat,
- (b) the pre-development biodiversity value of the onsite habitat,
- (c) any registered offsite biodiversity gain^(b) proposed to be allocated to the development and the biodiversity value of that gain in relation to the development,
- (d) any biodiversity credits^(c) proposed to be purchased for the development,
- (e) except in a section 73 case—
 - (i) the post-development biodiversity value^(d) of the onsite habitat of the development,
 - (ii) the post-development biodiversity value of the onsite habitat of each phase of development, and
 - (iii) the strategy for meeting the biodiversity gain objective^(e) if at any time after the development has begun there is a change in the information provided under paragraph (c), (d) or (e)(ii),

(ea) in a section 73 case—

- (i) the post-development biodiversity value of the onsite habitat for each phase of development (whether begun or otherwise);
- (ii) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development before the date of submission of the overall plan,
- (iii) any biodiversity credits purchased for the development before the date of submission of the overall plan, and
- (iv) the strategy for meeting the biodiversity gain objective if at any time after the development has begun there is a change in the information provided under paragraph (b), (c), (ea)(i) or (ea)(ii), and the reasons for any departure from the strategy specified in the overall plan approved in respect of the previous planning permission;”;

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

“(2A) Where the onsite habitat of any part of a development is irreplaceable habitat^(f)—

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- (a) 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 term “registered offsite biodiversity gain” has the meaning given by paragraph 10 of Schedule 7A to the Town and Country Planning Act 1990.
 - (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 “pre-development biodiversity value” has the meaning given by paragraph 5 of Schedule 7A to the Town and Country Planning Act 1990 and “post-development biodiversity value” has the meaning given by paragraph 8 of that Schedule.
 - (e) The term “biodiversity gain objective” has the meaning given by paragraph 2(1) of Schedule 7A to the Town and Country Planning Act 1990.
 - (f) “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 the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 (S.I. 2024/XXXX).

- (a) the words “and any other habitat” in sub-paragraph (2)(a), and
- (b) sub-paragraph (2)(c), (d) and (ea)(ii) and (iii),

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

(2B) In sub-paragraph (2), “a section 73 case” means a case where the biodiversity gain plan relates to a development for which planning permission has been granted under section 73 for the development of land without complying with conditions subject to which a previous planning permission was granted.”.

6. For the purposes of paragraph 13(2)(b)(i) (phase plan), paragraph 14 applies as if—

- (a) for sub-paragraphs (1) and (2)(a) to (e) there were substituted—

“Biodiversity gain plan: phase plan

14.—(1) For the purposes of paragraph 13(2)(b)(i) (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).

(2) The matters are—

- (a) the post-development biodiversity value of the onsite habitat for the phase of the development to which the phase 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 and the biodiversity value of that gain in relation to the development before the date of submission of the phase plan,
- (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 phase plan,
- (ea) any biodiversity credits proposed to be purchased for the development,
- (eb) the strategy for meeting the biodiversity gain objective if there is a change in the information provided under paragraph (a), (b), (c), (d) or (ea), and the reasons for any departure from the strategy specified in the overall plan,”;

- (b) 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(2)(a)(ii) (overall plan), paragraph 15 applies as if—

- (a) for sub-paragraphs (1) and (2)(a) to (e) there were substituted—

“Approval of overall plan

15.—(1) For the purposes of paragraph 13(2)(a)(ii) (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).

(2) The matters are—

- (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,
 - (ii) the biodiversity value in relation to the development of any registered offsite biodiversity gain proposed to be allocated to the development,
 - (iii) any biodiversity credits proposed to be purchased for the development, and
 - (iv) the strategy for meeting the biodiversity gain objective if at any time after the development has begun there is a change in the information provided under paragraph 14(2)(b), (c) or (e)(ii),
- (d) in a section 73 case, and subject to sub-paragraph (3), that the biodiversity gain objective will be met, taking into account in particular—
 - (i) 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 approved for that phase,
 - (ii) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development is as specified in the overall plan,
 - (iii) any biodiversity credits purchased for the development as specified in the overall plan have been so purchased, and
 - (iv) the strategy for meeting the biodiversity gain objective if at any time after the development has begun there is a change in the information provided under paragraph 14(2)(b), (c), (d), (ea)(i) or (ea)(ii), and the reasons for any departure from the strategy specified in the overall plan approved in respect of the previous planning permission;”;

(b) 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)(ii) and (iii), or (d)(ii) and (iii) 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.

(5) In sub-paragraph (2), “a section 73 case” means a case where the biodiversity gain plan relates to a development for which planning permission has been granted under section 73 for the development of land without complying with conditions subject to which a previous planning permission was granted.”.

8. For the purposes of paragraph 13(2)(b)(ii) (phase plan), paragraph 15 applies as if—

(a) for sub-paragraph (1) and (2)(a) to (e) there were substituted—

“Approval of phase plan

15.—(1) For the purposes of paragraph 13(2)(b)(ii) (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).

(2) The matters are—

- (a) that the post-development biodiversity value 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(2)(b)(i) (phase plan),

- (b) subject to sub-paragraph (3), that any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development is as specified in the phase plan,
 - (c) subject to sub-paragraph (3), that any biodiversity credits purchased for the development specified in the phase plan have been so purchased,
 - (d) where the onsite habitat of a part of the development to which the phase plan relates is irreplaceable habitat, that, having regard to the overall plan, 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,
 - (e) that the biodiversity gain objective will be met for the development, taking into account—
 - (i) the overall plan,
 - (ii) the strategy for meeting the biodiversity gain objective if at any time after the development has begun there is a change in the information provided under paragraph 14(2)(a), (b), (c), (d) or (ea) and the reasons for any departure from the strategy specified in the overall plan;”; and
- (b) 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)(b) and (c) do not apply in relation to that part of the phase of development.
- (4) For the purposes of sub-paragraph (2)(d), 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)—

(i) after sub-paragraph (c)(i)(bb), omit “and”;

(ii) after sub-paragraph (c)(i)(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);”;

(a) S.I. 2013/2140.

(b) S.I. [TBC BY REGISTRAR: BOTH INSTRUMENTS TO BE LAID TOGETHER]

- (iii) in sub-paragraph (c)(ii) for “(cc)” substitute “(dd)”;
- (b) after paragraph (1) insert—
 - “(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 biodiversity value of the onsite habitat on the relevant date(b);
 - (ii) the publication date of the biodiversity metric used to calculate that value(c);
 - (iii) the completed biodiversity metric calculation tool showing the calculation of the biodiversity value of the onsite habitat on the relevant date and, where the applicant proposes that the relevant date be a date before the date of the application, the biodiversity value of the onsite habitat on that earlier date;
 - (iv) a statement as to whether the biodiversity value of the onsite habitat is lower on the relevant date than it otherwise would have been as a result of the carrying on of activities mentioned in paragraph 6 or 6A(d) of Schedule 7A to the 1990 Act;
 - (v) in cases where the biodiversity value of the onsite habitat is lower on the relevant date than it otherwise would have been as a result of the carrying on of those activities, the biodiversity value of the onsite habitat immediately before the carrying on of those activities, and any available supporting evidence;
 - (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 relevant date;
 - (vii) a plan showing onsite habitat, including irreplaceable habitat, existing on the relevant date;
 - (viii) where the applicant proposes that the relevant date be an earlier date in accordance with paragraph 5(3) of Schedule 7A to the 1990 Act, the proposed earlier date, the reasons for proposing that date and the biodiversity value of the onsite habitat on that date.”;
- (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—

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- (a) The term “relevant application” is defined in article 2(1) of the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013/2140 and has the same meaning as in section 62A of the Town and Country Planning Act 1990.
 - (b) The term “the relevant date” has the meaning given by paragraph 5 of Schedule 7A to the Town and Country Planning Act 1990.
 - (c) 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 www.publications.naturalengland.org.uk and hardcopies may be obtained from [TBC]. The biodiversity metric may be revised and republished from time to time under paragraph 4(3) of Schedule 7A.
 - (d) Paragraph 6A of Schedule 7A to the Town and Country Planning Act 1990 was inserted by section 135 of the Levelling up and Regeneration Act 2023 (c. 55).

- “(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 commence (the overall plan and the first phase plan) and required before each phase of development may be begun (phase plans);”;
- (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) 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 biodiversity value of the onsite habitat on the relevant date;
 - (ii) the publication date of the biodiversity metric used to calculate that value,

(a) S.I. 2015/595.

- (iii) the completed biodiversity metric calculation tool showing the calculation of the biodiversity value of the onsite habitat on the relevant date and, where the applicant proposes that the relevant date be a date before the date of the application, the biodiversity value of the onsite habitat on that earlier date;
- (iv) a statement as to whether the biodiversity value of the onsite habitat is lower on the relevant date than it otherwise would have been as a result of the carrying on of activities mentioned in paragraph 6 or 6A(a) of Schedule 7A to the 1990 Act;
- (v) in cases where the biodiversity value of the onsite habitat is lower on the relevant date than it otherwise would have been as a result of the carrying on of those activities, the biodiversity value of the onsite habitat immediately before the carrying on of those activities, and any available supporting evidence;
- (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 relevant date;
- (vii) a plan showing onsite habitat, including any irreplaceable habitat, existing on the relevant date;
- (viii) where the applicant proposes that the relevant date be an earlier date in accordance with paragraph 5(3) of Schedule 7A to the 1990 Act, the proposed earlier date, the reasons for proposing that date and the biodiversity value of the onsite habitat on that date.

(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(b).”;

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

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 paragraph 13(2)(a) of Schedule 7A to the 1990 Act.”.

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

(a) Paragraph 6A of Schedule 7A to the Town and Country Planning Act 1990 was inserted by section 138 of the Levelling-up and Regeneration Act 2023.

(b) Section 73 of the Town and Country Planning Act 1990 was amended by the Planning and Compulsory Purchase Act 2004 (c. 5); section 35(7) of the Planning (Wales) Act 2015 and the Neighbourhood Planning Act 2017 (c. 20).

(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 commence (the overall plan and the first phase plan) and required before each phase of development may be begun (phase plans);”;

(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 for not approving or not determining a biodiversity gain plan (see Part 7A, article 30E).”.

19. 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 Town and Country Planning Act 1990;

(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 30D(4).”.

20. After Part 7 (appeals) insert—

“PART 7A

Biodiversity Gain Plan

Meaning of biodiversity gain hierarchy

30A. In this Part—

“biodiversity gain hierarchy” means the following actions in the following order of priority—

(a) avoiding adverse effects of the development to onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than six;

(b) so far as those adverse effects cannot be avoided, mitigating those effects;

(c) so far as those adverse effects cannot be mitigated, habitat enhancement^(a) of onsite habitat;

(d) so far as there cannot be that enhancement, creation of onsite habitat,

(e) so far as there cannot be that creation, the availability of registered offsite biodiversity gain;

(a) The term “habitat enhancement” has the meaning given by paragraph 12(2) of Schedule 7A to the Town and Country Planning Act 1990 (c. 8).

- (f) so far as that offsite habitat enhancement cannot be secured, purchasing biodiversity credits;

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

Form and timing of submission

30B. 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 notification is given of the decision to grant planning permission.

Additional content of plan

30C.—(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) or (b) of Schedule 7A to the 1990 Act, the reasons for this;
- (b) the completed biodiversity metric calculation tool, stating the publication date of the biodiversity metric used and showing the calculation of the pre-development and post-development biodiversity value of the onsite habitat;
- (c) pre-development and post-development plans—
 - (i) showing the location of onsite habitat;
 - (ii) drawn to an identified scale and showing the direction of North;
- (d) 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 commence in accordance with paragraph 13(2)(a)(i) of the 1990 Act (as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024, the 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) or (b) of Schedule 7A to the 1990 Act, the reasons for this;
 - (ii) the completed biodiversity metric calculation tool, stating the publication date of the biodiversity metric used and showing the calculation of the pre-development and post-development biodiversity values specified in the overall plan;
 - (iii) pre-development plans—
 - (aa) showing the location of onsite habitat;
 - (bb) drawn to an identified scale and showing the direction of North;
 - (iv) 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(2)(b)(i) of the 1990 Act (as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024, a phase plan) must also include—
 - (i) the reference number of any planning permission decision, other than the planning permission to which the phase plan relates, which the person submitting the plan considers is relevant to the phase of development;
 - (ii) the completed biodiversity metric calculation tool, stating the publication date of the biodiversity metric used and showing the calculation of the pre-development and post-development biodiversity values specified in the phase plan;
 - (iii) post-development plans for the phase of development—
 - (aa) showing the location of onsite habitat;
 - (bb) drawn to an identified scale and showing the direction of North;
 - (iv) 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;
 - (v) in relation to any part of the development to which the phase 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, has 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

30D.—(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 who submits 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 any part of 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 Town and Country Planning Act 1990, 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) In this article—

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

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

Appeals

30E.—(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 30D(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 which made the determination not to approve the biodiversity gain plan or which has not given written notice of its determination as required, 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 30D(1).
- (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) The appeal form may be obtained online from [TBC] and a hardcopy may be obtained from [TBC].

- (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).”.

PART 5

Transitional provisions

Transitional provisions

- 21.—(1) These Regulations do not apply to—
- (a) planning permission which is not a section 73 planning permission where the application for planning permission was made before [day 1];
 - (b) a section 73 planning permission where the original planning permission to which the section 73 planning permission relates was granted before [day 1];
 - (c) a section 73 planning permission where the application for the original planning permission to which the section 73 planning permission relates was made before [day 1].
- (2) For the purposes of this regulation—
- “section 73 planning permission” means planning permission granted on an application made under section 73 of the 1990 Act (determination of applications to develop land without compliance with conditions previously attached);
- “the 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.

PART 6

Review

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

- 22.—(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,

(a) 2015 (c. 26). Section 30 has been amended but not in a way which is relevant to these Regulations.

- (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).

DRAFT – NOT FOR SIGNATURE

Minister of State for Housing and Planning

Department for Levelling Up, Housing and Communities

Date

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 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.

Part 2 of these Regulations modifies Part 2 of Schedule 7A the Town and Country Planning Act 1990. It does this for outline planning permission where: (a) 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 same effect. Regulation 4 modifies the condition of planning permission relating to biodiversity gain (the biodiversity gain condition) so that biodiversity gain plans are required before development begins for the overall development (an overall plan) and for each phase (phase plans); regulations 5 and 6 modify the meaning of the biodiversity gain plan to provide for biodiversity gain plans which are overall plans and phase plans and to set out the matters to be specified in those plans; and 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. 2013/214) 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 including the onsite habitat including any irreplaceable habitat. The Orders are further amended to make provision for decision notices to include information relevant to the biodiversity gain condition and for the register of applications to include biodiversity gain plan information.

Regulation 20 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.

Part 5 makes transitional provisions so that these Regulations do not apply to particular planning permissions where the application for planning permission was made before [day 1] or where a planning permission is part of a sequence of planning permissions under section 73 of the 1990 Act and the original planning permission was granted before [day 1].

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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