

## SCHEDULES

### SCHEDULE 14

Section 98

#### BIODIVERSITY GAIN AS CONDITION OF PLANNING PERMISSION

##### PART 1

###### BIODIVERSITY GAIN CONDITION

1 In the Town and Country Planning Act 1990, after section 90 insert—

*“Biodiversity gain*

##### **90A Biodiversity gain in England**

Schedule 7A (biodiversity gain in England) has effect.”

2 In that Act, after Schedule 7 insert—

“SCHEDULE  
7A

Section 90A

#### BIODIVERSITY GAIN IN ENGLAND

##### PART 1

###### OVERVIEW AND INTERPRETATION

###### **Overview**

- 1 (1) This Schedule makes provision for grants of planning permission in England to be subject to a condition to secure that the biodiversity gain objective is met.
- (2) Paragraphs 2 to 12 have effect for the purposes of this Schedule.

###### **Biodiversity gain objective**

- 2 (1) The biodiversity gain objective is met in relation to development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage.
- (2) The biodiversity value attributable to the development is the total of—
  - (a) the post-development biodiversity value of the onsite habitat,

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- (b) the biodiversity value, in relation to the development, of any registered offsite biodiversity gain allocated to the development, and
  - (c) the biodiversity value of any biodiversity credits purchased for the development.
- (3) The relevant percentage is 10%.
- (4) The Secretary of State may by regulations amend this paragraph so as to change the relevant percentage.

**Biodiversity value and the biodiversity metric**

- 3       References to the biodiversity value of any habitat or habitat enhancement are to its value as calculated in accordance with the biodiversity metric.
- 4       (1) The biodiversity metric is a document for measuring, for the purposes of this Schedule, the biodiversity value or relative biodiversity value of habitat or habitat enhancement.
- (2) The biodiversity metric is to be produced and published by the Secretary of State.
- (3) The Secretary of State may from time to time revise and republish the biodiversity metric.
- (4) Before publishing or republishing the biodiversity metric the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (5) The Secretary of State may by regulations make transitional provision in relation to the revision and republication of the biodiversity metric.
- (6) The Secretary of State must lay the biodiversity metric, and any revised biodiversity metric, before Parliament.

**Pre-development biodiversity value**

- 5       (1) In relation to any development for which planning permission is granted, the pre-development biodiversity value of the onsite habitat is the biodiversity value of the onsite habitat on the relevant date.
- (2) The relevant date is—
- (a) in a case in which planning permission is granted on application, the date of the application, and
  - (b) in any other case, the date on which the planning permission is granted.
- (3) But the person submitting the biodiversity gain plan for approval and the planning authority may agree that the relevant date is to be a date earlier than that specified in sub-paragraph (2)(a) or (b) (but not a date which is before the day on which this Schedule comes into force in relation to the development).
- (4) This paragraph is subject to paragraphs 6 and 7.

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- 6 If—
- (a) a person carries on activities on land on or after 30 January 2020 otherwise than in accordance with—
    - (i) planning permission, or
    - (ii) any other permission of a kind specified by the Secretary of State by regulations, and
  - (b) as a result of the activities the biodiversity value of the onsite habitat referred to in paragraph 5(1) is lower on the relevant date than it would otherwise have been,

the pre-development biodiversity value of the onsite habitat is to be taken to be its biodiversity value immediately before the carrying on of the activities.

- 7 Where planning permission is granted in respect of land which is registered in the biodiversity gain site register under section 100 of the Environment Act 2021, the pre-development biodiversity value of the land is the total of—
- (a) the biodiversity value of the onsite habitat on the relevant date, and
  - (b) to the extent that it is not included within that value, the biodiversity value of the habitat enhancement which is, on that date, recorded in the register as habitat enhancement to be achieved on the land.

#### **Post-development biodiversity value**

- 8 (1) In relation to any development for which planning permission is granted, the post-development biodiversity value of the onsite habitat is the projected value of the onsite habitat as at the time the development is completed.
- (2) That value is to be calculated by taking the pre-development biodiversity value and—
- (a) if at the time the development is completed the development will, taken as a whole, have increased the biodiversity value of the onsite habitat, adding the amount of that increase, or
  - (b) if at the time the development is completed the development will, taken as a whole, have decreased the biodiversity value of the onsite habitat, subtracting the amount of that decrease.

This is subject to paragraph 9.

- 9 (1) This paragraph applies in relation to any development for which planning permission is granted where—
- (a) the person submitting the biodiversity gain plan for approval proposes to carry out works in the course of the development that increase the biodiversity value of the onsite habitat, and
  - (b) the planning authority considers that the increase is significant in relation to the pre-development biodiversity value.
- (2) The increase in biodiversity value referred to in sub-paragraph (1) is to be taken into account in calculating the post-development biodiversity

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value of the onsite habitat only if the planning authority is satisfied that the condition in sub-paragraph (3) is met.

- (3) The condition is that any habitat enhancement resulting from the works referred to in sub-paragraph (1)(a) will, by virtue of—
- (a) a condition subject to which the planning permission is granted,
  - (b) a planning obligation, or
  - (c) a conservation covenant,
- be maintained for at least 30 years after the development is completed.
- (4) The Secretary of State may by regulations amend sub-paragraph (3) so as to substitute for the period for the time being specified there a different period of at least 30 years.

### **Registered offsite biodiversity gains**

- 10 (1) “Registered offsite biodiversity gain” means any habitat enhancement, where—
- (a) the enhancement is required to be carried out under a conservation covenant or planning obligation, and
  - (b) the enhancement is recorded in the biodiversity gain site register (as to which, see section 100 of the Environment Act 2021).
- (2) References to the allocation of registered offsite biodiversity gain are to its allocation in accordance with the terms of the conservation covenant or planning obligation referred to in sub-paragraph (1)(a).
- (3) The biodiversity value of registered offsite biodiversity gain is measured, under the biodiversity metric, in relation to development to which it is allocated.

### **Biodiversity credits**

- 11 “Biodiversity credits” means credits under section 101 of the Environment Act 2021.

### **General**

- 12 (1) In relation to development for which planning permission is granted—
- “onsite habitat” means habitat on the land to which the planning permission relates;
  - “planning authority” means the local planning authority, except that—
    - (a) in a case where the planning permission is granted by Mayoral development order under section 61DB, “planning authority” means such of the Mayor of London or the local planning authority as may be specified in the order;
    - (b) in a case where the planning permission is granted by the Secretary of State under section 62A, 76A or 77, “planning authority” means such of the Secretary of State or the

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local planning authority as the Secretary of State may determine;

- (c) in a case where the planning permission is granted on an appeal under section 78, “planning authority” means such of the person determining the appeal or the local planning authority as that person may direct.
- (2) “Habitat enhancement” means enhancement of the biodiversity of habitat.
  - (3) References to the grant of planning permission include the deemed grant of planning permission.

## PART 2

### CONDITION OF PLANNING PERMISSION RELATING TO BIODIVERSITY GAIN

#### General condition of planning permission

- 13 (1) Every planning permission granted for the development of land in England shall be deemed to have been granted subject to the condition in sub-paragraph (2).
- (2) The condition is that the development may not be begun unless—
  - (a) a biodiversity gain plan has been submitted to the planning authority (see paragraph 14), and
  - (b) the planning authority has approved the plan (see paragraph 15).

#### Biodiversity gain plan

- 14 (1) For the purposes of paragraph 13(2)(a), a biodiversity gain plan is a plan which—
  - (a) relates to development for which planning permission is granted, and
  - (b) 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 and any other habitat,
  - (b) the pre-development biodiversity value of the onsite habitat,
  - (c) the post-development biodiversity value of the onsite habitat,
  - (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
  - (e) any biodiversity credits purchased for the development, and
  - (f) such other matters as the Secretary of State may by regulations specify.
- (3) The Secretary of State may by regulations make provision about—
  - (a) any other matters to be included in a biodiversity gain plan;

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- (b) the form of a biodiversity gain plan;
- (c) the procedure to be followed in relation to the submission of a biodiversity gain plan (including the time by which a plan must be submitted);
- (d) persons who may or must submit a biodiversity gain plan.

### **Approval of biodiversity gain plan**

- 15 (1) For the purposes of paragraph 13(2)(b) 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) that the post-development biodiversity value of the onsite habitat is at least the value specified in the plan,
  - (c) that, in a case where any registered offsite biodiversity gain is specified in the plan as allocated to the development—
    - (i) the registered offsite biodiversity gain is so allocated (and, if the allocation is conditional, that any conditions attaching to the allocation have been met or will be met by the time the development begins), and
    - (ii) the registered offsite biodiversity gain has the biodiversity value specified in the plan in relation to the development,
  - (d) that any biodiversity credits specified in the plan as purchased for the development have been so purchased,
  - (e) that the biodiversity gain objective is met, and
  - (f) any other matters specified in the plan under paragraph 14(2)(f).

### **Regulations about determinations**

- 16 The Secretary of State may make regulations as to—
- (a) the procedure which a planning authority is to follow in determining whether to approve a biodiversity gain plan (including the time by which a determination must be made);
  - (b) factors which may or must be taken into account in making such a determination;
  - (c) appeals relating to such a determination.

### **Exceptions**

- 17 Paragraph 13 does not apply in relation to—
- (a) development for which planning permission is granted—
    - (i) by a development order, or
    - (ii) under section 293A (urgent Crown development), or
  - (b) development of such other description as the Secretary of State may by regulations specify.

### **Modifications for irreplaceable habitat**

- 18 (1) The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to any development for which planning permission is granted where the onsite habitat is “irreplaceable habitat” as defined in the regulations.
- (2) Regulations under this paragraph must make provision requiring, in relation to any such development, the making of arrangements for the purpose of minimising the adverse effect of the development on the biodiversity of the onsite habitat.
- (3) Regulations under this paragraph may confer powers and duties, including powers and duties in relation to the giving of guidance, on Natural England.

### **Modifications for particular kinds of planning permission**

- 19 (1) The Secretary of State may by regulations make provision modifying the application of this Part of this Schedule in relation to—
- (a) the grant of outline planning permission, where the reservation of matters for subsequent approval has the effect of requiring or permitting development to proceed in phases, or
  - (b) the grant of any kind of planning permission, where the grant is subject to conditions (whether requiring the subsequent approval of any matters or otherwise) having that effect.
- (2) Regulations under this paragraph may include provision for a grant of planning permission referred to in sub-paragraph (1)(a) or (b) to be subject to conditions relating to meeting the biodiversity gain objective referred to in paragraph 2.
- 20 (1) The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to development for which—
- (a) planning permission is granted under section 73A (planning permission for development already carried out), or
  - (b) planning permission is granted by an order under section 102 (orders requiring discontinuance of use etc).
- (2) Regulations under this paragraph may in particular include provision—
- (a) for paragraph 13 not to apply in relation to the grant of planning permission referred to in sub-paragraph (1)(a) or (b);
  - (b) for the grant of any such planning permission to be subject to other conditions relating to meeting the biodiversity gain objective.
- (3) The conditions referred to in sub-paragraph (2)(b) may include conditions requiring—
- (a) habitat enhancement on the land to which the planning permission relates;
  - (b) the allocation of registered offsite biodiversity gain to any development for which the planning permission is granted;

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- (c) the purchase of biodiversity credits for any such development.

**Further application of this Part**

- 21 The Secretary of State may by regulations make provision to apply this Part of this Schedule in relation to development for which planning permission is granted under section 141 or 177(1), with such modifications or exclusions as may be specified in the regulations.”

**PART 2**

CONSEQUENTIAL AMENDMENTS

- 3 (1) The Town and Country Planning Act 1990 is amended as follows.
- (2) In section 56 (time when development begins), in subsection (3), at the end insert “and paragraph 13 of Schedule 7A”.
- (3) In section 69 (register of applications etc)—
- (a) in subsection (1), at the end insert—
- “(e) applications for approval of biodiversity gain plans under Part 2 of Schedule 7A.”;
- (b) in subsection (2)(a), for “and (aza)” substitute “, (aza) and (e)”.
- (4) In section 70 (determination of applications: general considerations), in subsection (1)(a), after “section 62D(5)” insert “, paragraph 13 of Schedule 7A”.
- (5) In section 73 (determination of applications to develop land after non-compliance), after subsection (2A) insert—
- “(2B) Nothing in this section authorises the disapplication of the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).
- (2C) Subsection (2D) applies where—
- (a) for the purposes of paragraph 13 of Schedule 7A a biodiversity gain plan was approved in relation to the previous planning permission (“the earlier biodiversity gain plan”),
- (b) planning permission is granted under this section, and
- (c) the conditions subject to which the planning permission is granted under this section do not affect the post-development biodiversity value of the onsite habitat as specified in the earlier biodiversity gain plan.
- (2D) Where this subsection applies, the earlier biodiversity gain plan is regarded as approved for the purposes of paragraph 13 of Schedule 7A in relation to the planning permission granted under this section.”
- (6) In section 74A (deemed discharge of planning permission conditions), after subsection (2) insert—
- “(2A) But this section does not apply to the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”



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- (7) In section 76C (provisions applying to applications made under section 62A), in subsection (2), after “Schedule 1” insert “, or by regulations under paragraph 14(3) or 16 of Schedule 7A,”.
- (8) In section 84 (simplified planning zone schemes: conditions and limitations on planning permission), at the end insert—
- “(5) A simplified planning zone scheme may not disapply the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”
- (9) In section 88 (enterprise zones), after subsection (3) insert—
- “(3A) Subsection (3) is subject to paragraph 13 of Schedule 7A (biodiversity gain condition).”
- (10) In section 96A (power to make non-material changes to planning permission), after subsection (3) insert—
- “(3A) The conditions referred to in subsection (3)(b) do not include the condition under paragraph 13 of Schedule 7A (biodiversity gain condition).”
- (11) In section 97 (revocation or modification of planning permission), at the end insert—
- “(7) Subsection (1) does not permit the revocation or modification of the condition under paragraph 13 of Schedule 7A (the biodiversity gain condition), subject as follows.
- (8) The Secretary of State may by regulations make provision—
- (a) for the condition under paragraph 13 of Schedule 7A to apply in relation to the modification of planning permission under this section, subject to such modifications as may be specified in the regulations;
- (b) for planning permission modified under this section to be subject to other conditions relating to meeting the biodiversity gain objective referred to in paragraph 2 of Schedule 7A (including conditions of a kind referred to in paragraph 20(3) of that Schedule).”
- (12) In section 100ZA (restriction on power to impose planning conditions in England), in subsection (13)(c), after “limitation” insert “but do not include the condition under paragraph 13 of Schedule 7A (biodiversity gain condition)”.
- (13) In section 106 (planning obligations), in subsection (1), in the words before paragraph (a), after “106C” insert “, Schedule 7A”.
- (14) In section 106A (modification and discharge of planning obligations), after subsection (6) insert—
- “(6A) Except in such cases as may be prescribed, the authority may not under subsection (6) discharge or modify the planning obligation if the authority considers that doing so would—
- (a) prevent the biodiversity gain objective referred to in paragraph 2 of Schedule 7A from being met in relation to any development, or
- (b) give rise to a significant risk of that objective not being met in relation to any development.”
- (15) In section 333 (regulations and orders), after subsection (3A) insert—

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“(3AA) No regulations may be made under paragraph 2(4) of Schedule 7A (biodiversity gain condition) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.”