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STATUTORY INSTRUMENTS

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**2024 No. 48**

**ENVIRONMENTAL PROTECTION, ENGLAND  
TOWN AND COUNTRY PLANNING, ENGLAND**

**The Biodiversity Gain Requirements  
(Irreplaceable Habitat) 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 the following regulations in exercise of the powers conferred by section 333(2A) of, and paragraph 18 of Schedule 7A to, the Town and Country Planning Act 1990<sup>(1)</sup>.

**Citation, commencement, interpretation and extent**

1.—(1) These Regulations may be cited as the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 and come into force on 12th February 2024.

(2) In these Regulations “Part 2 of Schedule 7A” means Part 2 of Schedule 7A to the Town and Country Planning Act 1990.

(3) These Regulations extend to England and Wales.

**Definition of “irreplaceable habitat”.**

2.—(1) For the purposes of Part 2 of Schedule 7A, “irreplaceable habitat” means any habitat of a description specified in the first column of the tables in the Schedule.

(2) In Table 1 in the Schedule, each description of habitat has the same meaning as in the list published by the Secretary of State under section 41 of the Natural Environment and Rural Communities Act 2006<sup>(2)</sup> (“the List”).

(3) In Table 2 in the Schedule, each description of habitat in column 1 is to be construed in accordance with the provision in the corresponding position in column 2.

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(1) 1990 c. 8; paragraph (2A) was inserted into section 333 by paragraph 14 of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5); Schedule 7A was inserted by paragraph 2 of Schedule 14 to the Environment Act 2021 (c. 30).  
(2) 2006 c. 16; the list published under section 41 can be accessed at <https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-england> and a hard copy may be obtained from DEFRA Helpline, Seacole Building, 2 Marsham Street, London SW1P 4DF.

(4) Natural England may issue guidance for the purpose of identifying whether a habitat falls within the descriptions in the tables in the Schedule.

### **Modification of application of Part 2 of Schedule 7A**

**3.—**(1) Subject to regulation 4, Part 2 of Schedule 7A applies in relation to any part of a development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat, with the following modifications.

(2) Paragraph 14(2) applies as if—

- (a) in paragraph (a) the words “and any other habitat” were omitted; and
- (b) paragraphs (d) and (e) were omitted.

(3) Paragraph 15 applies as if—

(a) in sub-paragraph (2)—

- (i) paragraphs (c) and (d) were omitted, and
- (ii) for paragraph (e) there were substituted—

“(e) 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”; and

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

“(3) 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.”.

### **Exception for phased development**

**4.** Regulation 3 does not apply 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.

### **Review**

**5.—**(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 the review.

(2) The first report must be published within 5 years of the coming into force of these Regulations.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015(3) requires that a report published under this regulation 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).

17th January 2024

*Rebecca Pow*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural  
Affairs

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SCHEDULE

Regulation 2

Irreplaceable habitats

**Table 1**

**Habitats contained in the List**

<i>Habitat</i>
Blanket bog
Lowland fens
Limestone pavements
Coastal sand dunes

**Table 2**

**Other habitats**

<i>Habitat</i>	<i>Description</i>
Ancient woodland	<p>Ancient woodland is areas of woodland that have been continuously wooded since at least 1600. Ancient woodland includes—</p> <ul style="list-style-type: none"> <li>(i) Ancient Semi-Natural Woodlands</li> <li>(ii) Plantations on Ancient Woodland Sites</li> <li>(iii) Ancient Wood Pasture and Parkland</li> <li>(iii) Infilled Ancient Wood Pasture and Parkland</li> </ul>
Ancient trees and veteran trees	<p>Ancient and veteran trees can be found as individual trees or collections of trees in any setting.</p> <p>Ancient trees have passed beyond maturity into an ancient life stage or are old in comparison with other trees of the same species which exhibit one or more of the following—</p> <ul style="list-style-type: none"> <li>(i) demonstrably great age relative to others of the same species</li> <li>(ii) changes to their crown and trunk development indicative of the ancient life stage</li> </ul> <p>Veteran trees are mature trees that share physical and other characteristics in common with ancient trees, due to their life or environment, but are neither developmentally</p>

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<i>Habitat</i>	<i>Description</i>
	<p>nor chronologically ancient. All ancient trees are veteran trees, but not all veteran trees are ancient. Veteran and ancient trees which have died are still recognised as such because they retain significant biodiversity value for many decades.</p> <p>Veteran trees exhibit one or more of the following—</p> <p>(i) significant decay features such as deadwood, hollowing or signs of advanced decay in the trunk or major limbs</p> <p>(ii) a large girth, depending on and relative to species, site and management history</p> <p>(iii) a high value for nature, especially in hosting rare or specialist fungi, lichens and deadwood invertebrates</p>
Spartina saltmarsh swards	Spartina (cord-grass) saltmarsh swards colonise a wide range of substrates, from very soft muds to shingle, in areas sheltered from strong wave action. It occurs on the seaward fringes of saltmarshes and creek-sides and may colonise old pans in the upper saltmarsh
Mediterranean saltmarsh scrub	Mediterranean and thermo-Atlantic halophilous (salt-tolerant) scrub develops in the uppermost levels of saltmarshes, often where there is a transition from saltmarsh to dunes, or in some cases where dunes overlie shingle. The form that most closely resembles the scrub vegetation of the Mediterranean is restricted to south and south-east England and is formed predominantly of bushes of shrubby sea-blite Suaeda vera and sea purslane Atriplex portulacoides

**EXPLANATORY NOTE**

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

Schedule 7A to the Town and Country Planning Act 1990 (“Schedule 7A”) makes provision for grants of planning permission in England to be subject to a condition to secure that a biodiversity gain objective is met. These Regulations define “irreplaceable habitat” for the purposes of Schedule 7A

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and modify its application in respect of habitat falling within the definition. The effect of the modifications is that the requirement applicable to developments for which planning permission is granted to increase the biodiversity value of the development by a specified percentage is disapplied. Instead alternative arrangements must be made for the purpose of minimising the adverse effect of the development on the biodiversity of the onsite habitat where that habitat is deemed irreplaceable. The modifications in this instrument do not apply in respect of a phased development – similar modifications for such development is contained in regulations made under paragraph 19 of Schedule 7A.

An impact assessment has not been published for this instrument as no significant impact on the costs of the private or voluntary sectors is foreseen.