



Environment Act 2021

2021 CHAPTER 30

PART 6

NATURE AND BIODIVERSITY

Biodiversity gain in planning

98 Biodiversity gain as condition of planning permission

Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England.

99 Biodiversity gain in nationally significant infrastructure projects

Schedule 15 makes provision about biodiversity gain in relation to development consent for nationally significant infrastructure projects.

100 Biodiversity gain site register

- (1) The Secretary of State may by regulations make provision for and in relation to a register of biodiversity gain sites (“the biodiversity gain site register”).
- (2) A biodiversity gain site is land where—
 - (a) a person is required under a conservation covenant or planning obligation to carry out works for the purpose of habitat enhancement,
 - (b) that or another person is required to maintain the enhancement for at least 30 years after the completion of those works, and
 - (c) for the purposes of Schedule 7A to the Town and Country Planning Act 1990 the enhancement is made available to be allocated (conditionally or unconditionally, and whether for consideration or otherwise) in accordance with the terms of the covenant or obligation to one or more developments for which planning permission is granted.

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- (3) Regulations under this section must provide for the information in the register to be accessible to members of the public.
- (4) Regulations under this section may in particular make provision about—
 - (a) the person who is to establish and maintain the biodiversity gain site register (who may be the Secretary of State, Natural England or another person);
 - (b) circumstances in which land is or is not eligible to be registered;
 - (c) applications to register land in the register;
 - (d) the information to be recorded in relation to any land that is registered;
 - (e) amendments to the register;
 - (f) removal of land from the register;
 - (g) fees payable in respect of any application under the regulations.
- (5) Provision under subsection (4)(c) may in particular include provision about—
 - (a) who is entitled to apply to register land in the biodiversity gain site register;
 - (b) the procedure to be followed in making an application;
 - (c) the information to be provided in respect of an application;
 - (d) how an application is to be determined;
 - (e) appeals against the rejection of an application;
 - (f) financial penalties for the supply of false or misleading information in connection with an application.
- (6) Provision under subsection (4)(d) may in particular require the recording of the following in relation to any land registered in the biodiversity gain site register—
 - (a) the location and area of the land;
 - (b) the works to be carried out on the land and the habitat enhancement to be achieved by them;
 - (c) information about the habitat of the land before the commencement of those works;
 - (d) the person who applied to register the land and (if different) the person by whom the requirement to carry out the works or maintain the habitat enhancement is enforceable;
 - (e) any development to which any of the habitat enhancement has been allocated;
 - (f) the biodiversity value (for the purposes of Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008) of any such habitat enhancement in relation to any such development.
- (7) Regulations under this section may amend subsection (2)(b) so as to substitute for the period for the time being specified there a different period of at least 30 years.
- (8) Regulations under this section making provision under subsection (4)(g) or (5)(f) are subject to the affirmative procedure.
- (9) Other regulations under this section are subject to the negative procedure.
- (10) The Secretary of State must keep under review—
 - (a) the supply of land for registration in the biodiversity gain site register;
 - (b) whether the period specified in subsection (2)(b) or in paragraph 9(3) of Schedule 7A to the Town and Country Planning Act 1990 can be increased under subsection (7) or paragraph 9(4) of that Schedule without adversely affecting that supply.

- (11) In this section “development”, “habitat enhancement”, “planning obligation” and “planning permission” have the same meanings as in Schedule 7A to the Town and Country Planning Act 1990.

101 Biodiversity credits

- (1) The Secretary of State may make arrangements under which a person who is entitled to carry out the development of any land may purchase a credit from the Secretary of State for the purpose of meeting the biodiversity gain objective referred to in Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008.
- (2) A credit is to be regarded for the purposes of that Schedule as having such biodiversity value as is determined under the arrangements.
- (3) The arrangements may in particular include arrangements relating to—
- (a) applications to purchase credits;
 - (b) the amount payable in respect of a credit of a given value;
 - (c) proof of purchase;
 - (d) reimbursement for credits purchased for development which is not carried out.
- (4) In determining the amount payable under the arrangements for a credit of a given value the Secretary of State must have regard to the need to determine an amount which does not discourage the registration of land in the biodiversity gain sites register.
- (5) The Secretary of State must publish information about the arrangements, including in particular the amount payable for credits.
- (6) The Secretary of State may use payments received under arrangements under this section for the following purposes (only)—
- (a) carrying out works, or securing the carrying out of works, for the purpose of habitat enhancement (within the meaning of Part 7A of the Town and Country Planning Act 1990) on land in England;
 - (b) purchasing interests in land in England with a view to carrying out works, or securing the carrying out of works, for that purpose;
 - (c) operating or administering the arrangements.
- (7) The references to works in subsection (6) do not include works which the Secretary of State is required to carry out apart from this section by virtue of any enactment.
- (8) The Secretary of State must publish reports relating to the discharge of the Secretary of State’s functions under subsections (1) and (6).
- (9) A report must relate to a period not exceeding a year which—
- (a) in the case of the first report, begins on the date on which Schedule 7A to the Town and Country Planning Act 1990 comes into force in relation to any development (within the meaning of Part 3 of that Act), and
 - (b) in the case of any subsequent report, begins on the day after the last day of the period to which the previous report related.
- (10) A report must set out—
- (a) the total payments received under arrangements under this section in the period to which the report relates,

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- (b) how those payments have been used, and
- (c) where those payments have been used for the purpose of carrying out or securing the carrying out of works for the purpose of habitat enhancement, the projected biodiversity value of the habitat enhancement at such time or times after completion of the works as the Secretary of State considers it appropriate to specify.