

Status: Point in time view as at 24/01/2022. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, SCHEDULE 15. (See end of Document for details)

SCHEDULES

PROSPECTIVE

SCHEDULE 15

Section 99

BIODIVERSITY GAIN IN NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

PART 1

PRINCIPAL AMENDMENTS TO THE PLANNING ACT 2008

1 The Planning Act 2008 is amended as follows.

Commencement Information

I1 Sch. 15 para. 1 not in force at Royal Assent, see [s. 147\(3\)](#)

2 In section 103 (Secretary of State is to decide applications), after subsection (1) insert—

“(1A) Schedule 2A makes provision about biodiversity gain in relation to decisions of the Secretary of State under sections 104 and 105; and for related matters.”

Commencement Information

I2 Sch. 15 para. 2 not in force at Royal Assent, see [s. 147\(3\)](#)

3 (1) Section 104 (decisions in cases where national policy statement has effect) is amended as follows.

(2) For subsection (3) substitute—

“(3) The Secretary of State must decide the application in accordance with any relevant national policy statement.

(3A) In particular, if a relevant national policy statement contains a biodiversity gain statement under Schedule 2A in relation to development of the description to which the application relates, the Secretary of State may not grant the application unless satisfied that the biodiversity gain objective contained in the statement is met in relation to the development to which the application relates.

(3B) Subsections (3) and (3A) do not apply to the extent that one or more of subsections (4) to (8) applies.”

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(3) In each of subsections (4), (5) and (6), for “any relevant national policy statement” substitute “subsection (3) or (3A)”.

(4) In subsection (8), for “a national policy statement” substitute “subsection (3) or (3A)”.

Commencement Information

I3 Sch. 15 para. 3 not in force at Royal Assent, see [s. 147\(3\)](#)

4 (1) Section 105 (decisions in cases where no national policy statement has effect), after subsection (2) insert—

“(3) Where there is a biodiversity gain statement under Schedule 2A in relation to development of the description to which the application relates, the Secretary of State may not grant the application unless satisfied that the biodiversity gain objective contained in the statement is met in relation to the development to which the application relates.

(4) Subsection (3) does not apply to the extent that the Secretary of State is satisfied that deciding the application in accordance with that subsection would have an effect referred to in section 104(4), (5), (6) or (7).”

Commencement Information

I4 Sch. 15 para. 4 not in force at Royal Assent, see [s. 147\(3\)](#)

5 After Schedule 2 insert—

“SCHEDULE
2A

Section 103

BIODIVERSITY GAIN

Introductory

1 (1) This Schedule applies to development which—

- (a) is of a description of development to which a development consent order application may relate, and
- (b) is not excluded development,

to the extent that the development is carried out in England.

(2) In this Schedule—

“development consent order application” means an application made under section 37 which falls to be determined under section 104 or 105;

“excluded development” means development of a description specified in regulations made by the Secretary of State.

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Biodiversity gain statement

- 2 (1) A biodiversity gain statement is a statement of government policy in relation to the biodiversity gain to be achieved in connection with any description of development to which this Schedule applies.
- (2) In particular the statement must—
- (a) set out a biodiversity gain objective for any description of development to which this Schedule applies, and
 - (b) set out that, where development consent order applications are made for any development of that description during a period specified in the statement, the development must meet that objective.
- (3) The statement may specify how development of any description may or must meet the biodiversity gain objective.
- (4) In this Schedule, references to the period for which a biodiversity gain statement has effect are to the period referred to in sub-paragraph (2)(b).
- 3 (1) A biodiversity gain objective is an objective that the biodiversity value attributable to development to which a biodiversity gain statement relates exceeds the pre-development biodiversity value of the onsite habitat by a percentage specified in the statement.
- (2) The percentage specified under sub-paragraph (1) must be at least 10%.
- (3) The Secretary of State may by regulations amend sub-paragraph (2) so as to change the percentage for the time being specified in it.
- 4 (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective how the biodiversity value or relative biodiversity value of any habitat or habitat enhancement is to be calculated.
- (2) That may include calculation by, or by reference to—
- (a) a biodiversity metric set out in a document produced by the Secretary of State for the purposes of the statement,
 - (b) the biodiversity metric referred to in paragraph 4 of Schedule 7A to the Town and Country Planning Act 1990, or
 - (c) such other biodiversity metric as the Secretary of State considers appropriate.
- (3) The Secretary of State must—
- (a) lay any document within sub-paragraph (2)(a) before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
- 5 (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective—
- (a) what the pre-development biodiversity value of onsite habitat consists of, and

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- (b) the date by reference to which it is calculated.
- (2) A biodiversity gain statement may in particular under sub-paragraph (1)(b) specify a different date in relation to development on land where activities on the land before the making of a development consent order application have, or have had, the result that the biodiversity value of the onsite habitat is lower than it would otherwise have been.
- (3) A biodiversity gain statement must include provision to secure that, where a development consent order application relates to land which is registered in the biodiversity gain site register, the pre-development biodiversity value of the onsite habitat includes the biodiversity value of the habitat enhancement which is, on the date specified under sub-paragraph (1)(b), recorded in the register as habitat enhancement to be achieved on the land.
- 6 (1) A biodiversity gain statement may specify for the purposes of a biodiversity gain objective what the biodiversity value attributable to any development consists of.
- (2) In particular, a biodiversity gain statement may specify any of the following as included in the biodiversity value attributable to any development—
- (a) the post-development biodiversity value of the onsite habitat,
 - (b) the biodiversity value of any offsite biodiversity gain allocated to the development (which may be registered offsite biodiversity gain), and
 - (c) the biodiversity value of any biodiversity credits purchased for the development.
- (3) If pursuant to sub-paragraph (2)(a) a biodiversity gain statement specifies the post-development biodiversity value of the onsite habitat, the statement must specify what that value consists of.
- (4) If pursuant to sub-paragraph (2)(b) a biodiversity gain statement specifies the biodiversity value of any offsite biodiversity gain allocated to the development, other than registered offsite biodiversity gain, the statement must specify—
- (a) what offsite biodiversity gain consists of, and
 - (b) how the allocation of offsite biodiversity gain is to be recorded.
- (5) Provision under sub-paragraph (3) or (4) must include provision to secure that, where works are carried out for the purposes of any development that increase the biodiversity value of onsite or offsite habitat by an amount that is significant in relation to its previous biodiversity value, the increase is to be taken into account only if—
- (a) any habitat enhancement resulting from the works is maintained for a period specified in the statement, and
 - (b) the maintenance of that habitat enhancement is secured in a way specified in the statement (for example, through conservation covenants or requirements imposed by a development consent order).

Status: Point in time view as at 24/01/2022. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, SCHEDULE 15. (See end of Document for details)

- 7 (1) A biodiversity gain statement must set out whether, and if so how, the biodiversity gain objective applies in relation to development where the onsite habitat is irreplaceable habitat.
- (2) A biodiversity gain statement may specify requirements, in relation to any such development, relating to the making of arrangements for the purpose of minimising the adverse effect of the development on the onsite habitat.
- 8 A biodiversity gain statement must specify the evidence that persons making a development consent order application in relation to which the statement has effect must produce in order to demonstrate how the biodiversity gain objective is met.

Development covered by an existing national policy statement

- 9 (1) This paragraph applies where, at the time this Schedule comes into force, an existing national policy statement sets out policy in respect of a description of development to which this Schedule applies.
- (2) On the first review of the existing national policy statement under section 6 after the coming into force of this Schedule, the Secretary of State must amend the statement under section 6(5)(a) so as to include a biodiversity gain statement for development of that description.
- (3) The Secretary of State may issue a separate biodiversity gain statement (a “separate biodiversity gain statement”) having effect for any period before that for which the statement included in the existing national policy statement under sub-paragraph (2) has effect.
- (4) Before issuing a separate biodiversity gain statement the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (5) The Secretary of State must keep a separate biodiversity gain statement under review and may amend it at any time.
- (6) The Secretary of State must—
- (a) lay a separate biodiversity gain statement before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
- (7) A separate biodiversity gain statement is for the purposes of section 104(2) to (9) to be regarded as contained in the existing national policy statement.
- (8) If it appears to the Secretary of State that the existing national policy statement is inconsistent with a separate biodiversity gain statement, the Secretary of State may amend the existing national policy statement in such manner as seems appropriate to the Secretary of State to remove the inconsistency.
- (9) Where the existing national policy statement is amended pursuant to sub-paragraph (2) to include a biodiversity gain statement in relation to

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any description of development, a separate biodiversity gain statement relating to development of that description must be revoked as from the beginning of the period for which the new statement has effect.

- (10) If the existing national policy statement’s designation as a national policy statement is withdrawn in relation to any description of development, any separate biodiversity gain statement relating to development of that description has effect as if it were a biodiversity gain statement issued under paragraph 10(2).
- (11) References in sub-paragraphs (4) to (10) to separate biodiversity gain statements include amended versions of such statements.
- (12) For the purposes of this Schedule, “existing national policy statement” means a national policy statement which is designated under section 5 before the coming into force of this Schedule.
- (13) For the purposes of sub-paragraph (2), an existing national policy statement is only reviewed under section 6 after the coming into force of this Schedule if the review begins after that time.

Development not covered by a national policy statement

- 10
- (1) This paragraph applies where, at the time this Schedule comes into force or any subsequent time, no national policy statement sets out policy in respect of a description of development to which this Schedule applies.
 - (2) The Secretary of State may issue a biodiversity gain statement in relation to that description of development.
 - (3) Before issuing a biodiversity gain statement under sub-paragraph (2) the Secretary of State must consult such persons as the Secretary of State considers appropriate.
 - (4) The Secretary of State must keep a statement issued under sub-paragraph (2) under review and may amend or revoke it at any time.
 - (5) The Secretary of State must—
 - (a) lay a statement issued under sub-paragraph (2) before Parliament, and
 - (b) publish it in such manner as the Secretary of State considers appropriate.
 - (6) References in sub-paragraphs (3) to (5) to statements issued under sub-paragraph (2) include amended versions of such statements.
 - (7) If after a statement is issued under sub-paragraph (2) a national policy statement relating to the description of development is designated under section 5, the Secretary of State must—
 - (a) include a biodiversity gain statement in relation to that description of development in the national policy statement, and
 - (b) revoke the statement issued under sub-paragraph (2).

Status: Point in time view as at 24/01/2022. This version of this schedule contains provisions that are prospective.

Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, SCHEDULE 15. (See end of Document for details)

Development at sea

- 11 (1) The Secretary of State may by regulations provide for this Schedule to apply, with or without modifications, to any development to which this paragraph applies.
- (2) This paragraph applies to development which—
- (a) is of a description to which a development consent order application may relate, and
 - (b) is not excluded development,
- to the extent that the development is carried out in the English marine region.
- (3) In sub-paragraph (2), the “English marine region” means—
- (a) the English offshore region, and
 - (b) the English inshore region, excluding waters in England.
- (4) Regulations under this paragraph may make provision modifying the application of this Schedule in relation to development which is carried out at an inter-tidal location.
- (5) In sub-paragraph (4), “inter-tidal location” means a location that—
- (a) is in England, and
 - (b) is also at any time in the English inshore region.

Interpretation

- 12 For the purposes of this Schedule—
- “biodiversity credits” means credits under section 101 of the Environment Act 2021;
 - “biodiversity gain site register” means the register under section 100 of the Environment Act 2021;
 - a “biodiversity metric” is a means of measuring the biodiversity value or relative biodiversity value of habitat or habitat enhancement;
 - “development consent order application” has the meaning given by paragraph 1(2);
 - “English inshore region” and “English offshore region” have the meanings given by section 322 of the Marine and Coastal Access Act 2009;
 - “excluded development” has the meaning given by paragraph 1(2);
 - “existing national policy statement” has the meaning given by paragraph 9(12);
 - “irreplaceable habitat” has the meaning given in regulations under paragraph 18 of Schedule 7A to the Town and Country Planning Act 1990;
 - “onsite habitat”, in relation to any development, means habitat on the land to which the development consent order

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application relates, and “offsite habitat” means habitat on other land;

“registered offsite biodiversity gain” has the meaning given by paragraph 10 of Schedule 7A to the Town and Country Planning Act 1990.”

Commencement Information

I5 Sch. 15 para. 5 not in force at Royal Assent, see [s. 147\(3\)](#)

PART 2

SUPPLEMENTARY AMENDMENTS TO THE PLANNING ACT 2008

6 The Planning Act 2008 is amended as follows.

Commencement Information

I6 Sch. 15 para. 6 not in force at Royal Assent, see [s. 147\(3\)](#)

7 In section 37 (applications for orders for development consent), after subsection (3) insert—

“(3A) The documents and information prescribed under subsection (3)(d) may include documents and information demonstrating how any biodiversity gain objective in a biodiversity gain statement under Schedule 2A having effect in relation to the development is to be met.”

Commencement Information

I7 Sch. 15 para. 7 not in force at Royal Assent, see [s. 147\(3\)](#)

8 In section 120 (what may be included in development consent order), in subsection (2), at the end insert—

“(c) requirements designed to secure that—

- (i) the biodiversity gain objective under Schedule 2A relevant to the development is met;
- (ii) any proposals included in the application for the order for the purposes of meeting the biodiversity gain objective are implemented.”

Commencement Information

I8 Sch. 15 para. 8 not in force at Royal Assent, see [s. 147\(3\)](#)

9 (1) Section 232 (orders and regulations) is amended as follows.

(2) In subsection (5), at the end insert—

“(f) regulations under paragraph [3\(3\)](#) or [11](#) of Schedule 2A.”

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Changes to legislation: There are currently no known outstanding effects for the Environment Act 2021, SCHEDULE 15. (See end of Document for details)

(3) In subsection (7), after “or 105(2)(b)” insert “or paragraph 3(3) or 11 of Schedule 2A”.

Commencement Information

I9 Sch. 15 para. 9 not in force at Royal Assent, see [s. 147\(3\)](#)

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