
STATUTORY INSTRUMENTS

2024 No. 45

The Biodiversity Gain Site Register Regulations 2024

PART 5

Amendment of an entry in the biodiversity gain site register on application to the register operator

Application to amend information in an entry in the biodiversity gain site register

17.—(1) Subject to paragraphs (5) and (6), an application may be made to the register operator on one of the grounds in paragraph (2) to amend the information in an entry in the biodiversity gain site register in which land is registered in relation to a particular conservation covenant or section 106 agreement.

(2) The grounds referred to in paragraph (1) are that—

- (a) the information referred to in regulation 8(2)(f), (g), (h), (i) and (j) recorded in the entry, or any of that information, is incomplete or inaccurate as a result of a relevant modification made to the conservation covenant or section 106 agreement after the information was recorded;
- (b) the information referred to in regulation 8(2)(k) recorded in the entry in relation to the allocation of any habitat enhancement to a development needs to be removed from the entry because the habitat enhancement has wholly ceased to be allocated to the development;
- (c) the information referred to in regulation 8(2)(k) recorded in the entry in relation to the allocation of any habitat enhancement to a development is inaccurate because the habitat enhancement has partly ceased to be allocated to the development;
- (d) the information referred to in regulation 8(2)(f), (g), (h), (i), (j) and (k) recorded in the entry, or any of that information, is incomplete or inaccurate for any other reason.

(3) For the purposes of this regulation, a relevant modification is made to a conservation covenant or section 106 agreement where—

- (a) in the case of a conservation covenant—
 - (i) an obligation under the covenant is modified by agreement,
 - (ii) an obligation under the covenant is discharged by agreement,
 - (iii) any of the land to which the covenant relates, or any estate in any of that land, is discharged by agreement from an obligation under the covenant,
 - (iv) an obligation under the covenant is modified or discharged by order of the Upper Tribunal,
 - (v) a court or tribunal makes a decision about the effect of the covenant,
 - (vi) a document which describes any of the required enhancement works, and which was produced in accordance with the terms of the conservation covenant, is amended by any instrument, or

- (vii) a supplemental instrument relating to the conservation covenant is amended by any instrument;
- (b) in the case of a section 106 agreement—
 - (i) a planning obligation in the section 106 agreement is modified or discharged by agreement,
 - (ii) a determination, notice or other instrument is made or given which has the effect of modifying or discharging a planning obligation in the section 106 agreement,
 - (iii) the section 106 agreement is otherwise amended by any instrument,
 - (iv) a court or tribunal makes a decision about the effect of a planning obligation in the section 106 agreement,
 - (v) a document which describes any of the required enhancement works, and which was produced in accordance with the terms of a planning obligation in the section 106 agreement, is amended by any instrument, or
 - (vi) a supplemental instrument relating to the section 106 agreement is amended by any instrument.
- (4) For the purposes of paragraph (3)(a)(vii) and (b)(vi), a supplemental instrument relating to a conservation covenant or section 106 agreement is an agreement or other document which was entered into or produced pursuant to the terms of the conservation covenant or a planning obligation in the section 106 agreement and which describes things to be done in relation to the land for the purpose of—
 - (a) maintaining any habitat enhancement to be achieved by works required to be carried out on land under that conservation covenant or (as the case may be) under any planning obligation in that section 106 agreement, or
 - (b) monitoring habitats on the land to ensure that any habitat enhancement to be achieved by works required to be carried out on land under that conservation covenant or (as the case may be) under any planning obligation in that section 106 agreement is maintained for the period for which it is required to be maintained under the conservation covenant or a planning obligation in the section 106 agreement.
- (5) An application on the grounds in paragraph (2)(a) may not be made if (subject to paragraph (6)) one or more of the conditions in regulation 6 have ceased to be met in relation to the land and the conservation covenant or section 106 agreement in relation to which it is registered.
- (6) Where the required enhancement works have been completed on the land, the fact that the condition in regulation 6(2) has ceased to be met for that reason is to be disregarded for the purposes of paragraph (5).
- (7) Where the entry records the allocation of any habitat enhancement to a development, an application may not be made on the grounds in paragraph (2)(a) or (d) to amend the information in the entry so far as that information relates to that allocated habitat enhancement.
- (8) An application to amend an entry in the biodiversity gain site register may only be made by—
 - (a) a relevant person, or
 - (b) a person who has the consent of every relevant person to make the application.
- (9) In paragraph (8) a “relevant person”, in relation to an application to amend an entry in the biodiversity gain site register, means—
 - (a) where land is registered in the entry in relation to a conservation covenant—
 - (i) a person who is required under the covenant to carry out works on the land for the purpose of habitat enhancement,

- (ii) a person who is required under the covenant to maintain any habitat enhancement to be achieved by works required to be carried out on the land for that purpose under the covenant, or
 - (iii) a person by whom a requirement referred to in paragraph (i) or (ii) is enforceable, but not the responsible person under the covenant;
 - (b) where land is registered in the entry in relation to a section 106 agreement, a person who is required under a planning obligation in the section 106 agreement—
 - (i) to carry out works on the land for the purpose of habitat enhancement, or
 - (ii) to maintain any habitat enhancement to be achieved by works required to be carried out on the land for that purpose under a planning obligation in the section 106 agreement.
- (10) An application to amend an entry in the biodiversity gain site register must—
- (a) include the name of the applicant;
 - (b) include evidence that the applicant is entitled under this regulation to make the application;
 - (c) include—
 - (i) an address to which notices under these Regulations in connection with the application may be sent by post to the applicant, and
 - (ii) an email address to which such notices may be sent to the applicant;
 - (d) include the registration number assigned to the entry under regulation 11(2)(b);
 - (e) specify the grounds under paragraph (2)(a), (b), (c) or (d) on which the application is made and explain why the applicant considers those grounds are met;
 - (f) where the application is made on the grounds in paragraph (2)(d), explain why the applicant considers the information to which the application relates to be incomplete or inaccurate;
 - (g) specify the amendments which the applicant considers need to be made;
 - (h) where the application is made on the grounds that information in an entry in the biodiversity gain site register is incomplete or inaccurate as a result of a relevant modification made to a conservation covenant or section 106 agreement, include a copy of the agreement, determination, notice, instrument or decision referred to in paragraph (3) (a) or (b) with which the application is concerned.
- (11) An application referred to in this regulation may be withdrawn by the applicant, but the withdrawal of an application is effective only if the register operator receives a written notification of the withdrawal from the applicant before deciding whether to accept or reject the application.
- (12) In this regulation “the required enhancement works”, in relation to an application to amend the information in an entry in the biodiversity gain site register, means—
- (a) where land is registered in the entry in relation to a conservation covenant, the works required to be carried out on the land for the purpose of habitat enhancement under that conservation covenant, or
 - (b) where land is registered in the entry in relation to a section 106 agreement, the works required to be carried out on the land for the purpose of habitat enhancement under the planning obligations in that section 106 agreement.

Determination of application to amend a register entry

18.—(1) This regulation applies where the register operator has received an application to amend the information in an entry in the biodiversity gain site register.

(2) If the register operator does not receive payment of a fee for the application in accordance with the Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024, the register operator must reject the application.

(3) The following provisions of this regulation apply where the register operator has received payment of a fee for the application in accordance with those Regulations.

(4) Subject to paragraph (13), the register operator must consider the application and must, in accordance with the following provisions of this regulation, either accept or reject it.

(5) Subject to the following provisions of this regulation, the application must be accepted if—

- (a) the application meets the requirements of regulation 17(10)(e), (f) (where relevant) and (g),
- (b) it appears to the register operator that the application includes the evidence, other information and documents required by regulation 17(10)(a) to (d) and (h),
- (c) the register operator is satisfied that the applicant is entitled under regulation 17 to make the application,
- (d) where the application is made on the grounds in regulation 17(2)(a), the register operator is satisfied that—
 - (i) those grounds and the conditions in regulation 17(5) and (7) are met, and
 - (ii) the amendments requested by the applicant, or any of those amendments, need to be made so that the information to which the application relates is complete and accurate, and
- (e) where the application is made on the grounds in regulation 17(2)(d), the register operator is satisfied that—
 - (i) those grounds and the condition in regulation 17(7) are met, and
 - (ii) the amendments requested by the applicant, or any of those amendments, need to be made so that the information to which the application relates is complete and accurate.

(6) The register operator may, by giving notice to the applicant, request any information it needs in order to determine whether it is required by paragraph (5) to accept the application.

(7) Where, having given notice under paragraph (6) requesting information from the applicant, the register operator is satisfied that it has received all of the information requested by that notice, the register operator must as soon as practicable give notice to the applicant informing the applicant that it is so satisfied.

(8) The register operator may reject the application if—

- (a) it has given notice requesting information from the applicant under paragraph (6),
- (b) a period of three months beginning with the day on which the notice was given has expired, and
- (c) it has not been provided with the requested information.

(9) A notice under paragraph (6) must explain the effect of paragraph (8).

(10) The application must be rejected—

- (a) if—
 - (i) the application does not meet the requirements of regulation 17(10)(e), (f) (where relevant) and (g),
 - (ii) it does not appear to the register operator as mentioned in paragraph (5)(b),
 - (iii) the register operator is not satisfied as mentioned in paragraph (5)(c),

(iv) the register operator is not satisfied as mentioned in regulation paragraph (5)(d) or (e) (as the case may be),

and the register operator has decided not to make a request (or a further request) for information under paragraph (6), or

(b) if the register operator considers that false or misleading information has been supplied to it in connection with the application.

(11) Where the register operator decides that it is necessary, for the purposes of considering the application, to investigate whether any information supplied to it in connection with the application is false or misleading, it must—

(a) give notice to the applicant as soon as practicable informing the applicant that it has so decided, and

(b) as soon as practicable after concluding the investigation, give notice to the applicant that it has concluded the investigation,

and a notice under this paragraph must state the date on which the decision was made or the investigation was concluded (as the case may be).

(12) Where the application is accepted, the register operator must amend the entry in the register accordingly as soon as practicable.

(13) Paragraph (4) ceases to apply in relation to the application if the application is withdrawn (see regulation 17(11)).

Requirement to give notice of outcome of an application to amend a register entry

19.—(1) Where the register operator accepts or rejects an application referred to in regulation 17(1), it must give notice to the applicant that it has done so as soon as practicable.

(2) A notice under paragraph (1) informing the applicant of the rejection of an application must—

(a) give reasons for the register operator’s decision to reject the application, and

(b) contain information about the right of appeal under regulation 30(3).

(3) Where the register operator accepts an application but is not satisfied that all of the amendments requested by the applicant in that application need to be made, a notice under paragraph (1) informing the applicant of the acceptance of the application must—

(a) identify the amendments requested by the applicant which the register operator is not satisfied need to be made,

(b) explain why the register operator is not satisfied that they need to be made, and

(c) contain information about the right of appeal under regulation 30(4).