
STATUTORY INSTRUMENTS

2024 No. 45

The Biodiversity Gain Site Register Regulations 2024

PART 9

Appeals

Right to appeal against rejection of an application, amendment of the register or removal of an entry from the register

30.—(1) Where the register operator gives notice under regulation 10 that it has rejected an application referred to in regulation 7 (application to register land in the biodiversity gain site register) the person who made the application may appeal to the First-tier Tribunal against the register operator’s decision to reject the application.

(2) Where the register operator gives notice under regulation 15(2) that it has rejected an application referred to in regulation 12(2) (application to record the allocation of any habitat enhancement to a development in the biodiversity gain site register) the person who made the application may appeal to the First-tier Tribunal against the register operator’s decision to reject the application.

(3) Where the register operator gives notice under regulation 19 that it has rejected an application referred to in regulation 17(1) (application to amend an entry in the biodiversity gain site register) the person who made the application may appeal to the First-tier Tribunal against the register operator’s decision to reject the application.

(4) Where the register operator gives notice under regulation 19 that it has accepted an application referred to in regulation 17(1) (application to amend an entry in the biodiversity gain site register) but is not satisfied that all of the amendments requested in the application by the person who made the application need to be made, the person who made the application may appeal to the First-tier Tribunal against the register operator’s decision not to make the requested amendments or any of them.

(5) Where the register operator amends an entry in the biodiversity gain site register under regulation 20 (amendment of an entry without application) any interested person may appeal to the First-tier Tribunal against the register operator’s decision to amend the entry.

(6) Where the register operator gives notice under regulation 25(13) that it has rejected an application referred to in regulation 24(2) (application to have an entry removed from the biodiversity gain site register) the person who made the application may appeal to the First-tier Tribunal against the register operator’s decision to reject the application.

(7) Where the register operator removes an entry from the biodiversity gain site register under regulation 26 (removal of an entry without application) any interested person may appeal to the First-tier Tribunal against the register operator’s decision to remove the entry.

(8) For the purposes of paragraphs (5) and (7), an “interested person” in relation to an appeal against the amendment or removal of an entry in the biodiversity gain site register in which land is registered in relation to a conservation covenant means a person—

- (a) who is required under the conservation covenant to carry out works on the land for the purpose of habitat enhancement,
- (b) who is required under the conservation 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
- (c) by whom a requirement referred to in sub-paragraph (a) or (b) is enforceable.

(9) For the purposes of paragraphs (5) and (7), an “interested person” in relation to an appeal against the amendment or removal of an entry in the biodiversity gain site register in which land is registered in relation to a section 106 agreement means a person—

- (a) who is required under a planning obligation in the section 106 agreement to carry out works on the land for the purpose of habitat enhancement,
- (b) who is required under a planning obligation in the section 106 agreement 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, or
- (c) by whom a requirement referred to in sub-paragraph (a) or (b) is enforceable.

Determination of appeal against rejection of an application

31.—(1) This regulation applies to an appeal under regulation 30(1), (2), (3) or (6) against a decision of the register operator to reject an application.

(2) Where, on an appeal to which this regulation applies, the First-tier Tribunal is satisfied that any of the grounds in paragraph (4) applies, it must quash the register operator’s decision to reject the application and—

- (a) direct the register operator to accept the application, or
- (b) direct the register operator to reconsider the application under regulation 9, 14, 18 or 25 (as the case may be) in accordance with its ruling.

(3) Where, on an appeal to which this regulation applies, the First-tier Tribunal is not satisfied that any of the grounds in paragraph (4) applies, it must confirm the register operator’s decision to reject the application.

(4) The grounds referred to in paragraphs (2) and (3) are—

- (a) that the register operator’s decision to reject the application was based, wholly or partly, on an error of fact;
- (b) that the register operator’s decision to reject the application was wrong in law;
- (c) where the decision to reject the application was made under regulation 9(10), 14(10), 18(8) or 25(10), that the register operator’s decision to reject the application was unfair or unreasonable for any other reason;
- (d) that any decision of the register operator not to exercise its power under regulation 9(6), 14(6), 18(6), or 25(6) (as the case may be), and to reject the application as a result, was unfair or unreasonable for any other reason.

Determination of appeal against decision not to make requested amendments

32.—(1) This regulation applies to an appeal under regulation 30(4) against a decision of the register operator not to make an amendment or amendments requested in an application referred to in regulation 17(1) (application to amend an entry in the biodiversity gain site register).

(2) Where, on an appeal to which this regulation applies, the First-tier Tribunal is satisfied that either of the grounds in paragraph (4) applies in relation to the register operator’s decision not to make an amendment, it must quash the register operator’s decision not to make the amendment and—

- (a) direct the register operator to make the amendment, or
- (b) direct the register operator to reconsider whether to make the amendment.

(3) Where, on an appeal to which this regulation applies, the First-tier Tribunal is not satisfied that either of the grounds in paragraph (4) applies in relation to the register operator's decision not to make an amendment, it must confirm the register operator's decision not to make the amendment.

- (4) The grounds referred to in paragraphs (2) and (3) are—
 - (a) that the register operator's decision was based, wholly or partly, on an error of fact;
 - (b) that the register operator's decision was wrong in law.

Determination of appeal against amendment or removal of a register entry

33.—(1) This regulation applies to an appeal under regulation 30 against a decision of the register operator to—

- (a) amend an entry in the biodiversity gain site register under regulation 20 (amendment of an entry without application), or
- (b) remove an entry from the biodiversity gain site register under regulation 26 (removal of an entry without application).

(2) Where, on an appeal to which this regulation applies, the First-tier Tribunal is satisfied that any of the grounds in paragraph (4) applies, it must—

- (a) quash the register operator's decision, and
- (b) direct the register operator to reverse the amendment in the biodiversity gain site register or reinstate the removed entry (as the case may be).

(3) Where, on an appeal to which this regulation applies, the First-tier Tribunal is not satisfied that any of the grounds in paragraph (4) applies, it must confirm the register operator's decision.

- (4) The grounds referred to in paragraph (2) and (3) are—
 - (a) that the decision appealed against was based, wholly or partly, on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unfair or unreasonable for any other reason.

Consequences of appeal where register operator directed to accept an application

34.—(1) Where the register operator is directed under regulation 31(2)(a) to accept an application referred to in regulation 7, the register operator must comply accordingly with the requirements of regulation 11 in relation to that application.

(2) Where the register operator is directed under regulation 31(2)(a) to accept an application referred to in regulation 12(2), the register operator must comply accordingly with the requirements of regulation 16 in relation to that application.

(3) Where the register operator is directed under regulation 31(2)(a) to accept an application referred to in regulation 17(1), the register operator must comply accordingly with the requirements of regulation 18(12) and regulation 19(1) in relation to that application.

(4) Where the register operator is directed under regulation 31(2)(a) to accept an application referred to in regulation 24(2), the register operator must—

- (a) comply with the requirements of regulation 25(12) in relation to that entry and any documents referred to in that regulation, and
- (b) comply accordingly with the requirement in regulation 25(13) in relation to the application.

Consequences of appeal where register operator is directed to reconsider an application or a decision not to make an amendment

35.—(1) Where the register operator is directed under regulation 31(2)(b) to reconsider an application referred to in regulation 7, regulations 9, 10 and 11 apply in relation to the application as though it had not been rejected.

(2) Where the register operator is directed under regulation 31(2)(b) to reconsider an application referred to in regulation 12(2), regulations 14, 15 and 16 apply in relation to the application as though it had not been rejected.

(3) Where the register operator is directed under regulation 31(2)(b) to reconsider an application referred to in regulation 17(1), regulations 18 and 19 apply in relation to the application as though it had not been rejected.

(4) Where the register operator is directed under regulation 31(2)(b) to reconsider an application referred to in regulation 24(2), regulation 25 applies in relation to the application as though it had not been rejected.

(5) Where the register operator is directed under regulation 32(2)(b) to reconsider a decision not to make an amendment to the information in an entry in the biodiversity gain site register, it must reconsider that decision and, if it is satisfied that the amendment needs to be made, make that amendment accordingly.