
STATUTORY INSTRUMENTS

2024 No. 50

**The Biodiversity Gain (Town and Country Planning)
(Modifications and Amendments) (England) Regulations 2024**

PART 4

**Amendments to the Town and Country Planning
(Development Management Procedure) (England) Order 2015**

13. The Town and Country Planning (Development Management Procedure) (England) Order 2015(1) is amended in accordance with regulations 14 to 20.

14. In article 2 (interpretation) after the definition of “infrastructure manager”, insert—
““irreplaceable habitat” has the meaning given by regulation 2 of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024;”.

15. In article 7 (general requirements: applications for planning permission including outline planning permission)—

(a) in paragraph (1), after sub-paragraph (c)(ii), insert—

“(ia) the information relating to the condition under paragraph 13 of Schedule 7A to the 1990 Act (“the biodiversity gain condition”) specified in paragraph (1A);”;

(b) after paragraph (1) insert—

“(1A) Subject to paragraph (1B), an application for planning permission must be accompanied by the following information relating to the biodiversity gain condition—

(a) a statement as to whether the applicant believes that planning permission, if granted, would be subject to the biodiversity gain condition;

(b) where the applicant believes that planning permission, if granted, would not be subject to the biodiversity gain condition, the reasons for that belief;

(c) in cases where the applicant believes that planning permission, if granted, would be subject to the biodiversity gain condition—

(i) the completed biodiversity metric calculation tool or tools (as the case may be) showing the calculation of the biodiversity value of the onsite habitat, for the purpose of the biodiversity gain plan required to be submitted under paragraph 13 of Schedule 7A to the 1990 Act if permission is granted, on—

(aa) the date of the application, or

(bb) an earlier date proposed by the applicant, and

(cc) in either case, the date immediately before any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land;

- (ii) the biodiversity value or values (as the case may be) referred to in paragraph (i);
- (iii) the publication date of the biodiversity metric calculation tool or tools (as the case may be) used to calculate the values referred to in paragraph (i);
- (iv) if an earlier date is proposed by the applicant under paragraph (i)(bb), the reasons why that earlier date is proposed;
- (v) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—
 - (aa) a statement that such activities have been carried out,
 - (bb) confirmation of the date immediately before those activities were so carried out, and
 - (cc) any available supporting evidence for the date referred to in sub-paragraph (bb) and for the value referred to in paragraph (i)(cc).
- (vi) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (aa) is on the land to which the application relates, and
 - (bb) exists on the date referred to in paragraph (i)(aa) or (bb) (as applicable);
- (vii) a plan showing the location, on the date referred to in paragraph (i)(aa) or (bb) (as applicable), of—
 - (aa) the onsite habitat included in the calculations referred to in paragraph (i), and
 - (bb) any irreplaceable habitat.

(1B) Paragraph (1A) does not apply to an application for permission to develop land without compliance with conditions previously attached made under section 73 of the 1990 Act.”;

- (c) in paragraph (2), for “(1)(c)(i) or (ii)” substitute “(1) or (1A)”.

16. In article 27 (applications made under a planning condition), after paragraph (3) insert—

“(4) Part 7A applies, and paragraphs (1) and (2) do not apply, to the submission of a biodiversity gain plan for approval under—

- (a) paragraph 13(2)(a) of Schedule 7A to the 1990 Act, or
- (b) paragraph 13(3)(a) or (5)(a) of Schedule 7A to the 1990 Act as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024.”.

17. In article 35 (written notice of decision or determination relating to a planning application)—

- (a) in paragraph (1), before sub-paragraph (a), insert—

“(za) where planning permission is granted, the notice must include—

- (i) information relating to the condition in paragraph 13 of Schedule 7A to the 1990 Act (biodiversity gain condition) including that there are exemptions, transitional arrangements and requirements relating to irreplaceable habitat,

- (ii) information to note the effect of section 73(2D) of the 1990 Act (earlier biodiversity gain plan in relation to a previous planning permission regarded as approved for purposes of paragraph 13 of Schedule 7A),
 - (iii) details of the planning authority under paragraph 12(1) of Schedule 7A (biodiversity gain in England), and
 - (iv) where development is to proceed in phases and the modifications in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply, a statement to that effect and to the effect that biodiversity gain plans are required before development may be begun and required before each phase of development may be begun;”;
- (b) after paragraph 1, insert—
- “(1A) References in paragraph (1)(a) to a condition do not include a condition under paragraph 13 of Schedule 7A (the biodiversity gain condition).”.
- 18.** In article 37 (appeals) at the beginning insert—
- “(A1) This article does not apply to an appeal to the Secretary of State under section 78 of the 1990 Act⁽²⁾ for not approving or not determining a biodiversity gain plan (see Part 7A, article 37E).”.
- 19.** After Part 7 (appeals) insert—

“PART 7A

Biodiversity Gain Plan

Meaning of biodiversity gain hierarchy

37A. In this Part, “biodiversity gain hierarchy” means the following actions in the following order of priority—

- (a) in relation to onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than four—
 - (i) avoiding adverse effects of the development, or
 - (ii) insofar as those adverse effects cannot be avoided, mitigating those effects;
- (b) in relation to any onsite habitat which is adversely affected by the development, compensating for that adverse effect by—
 - (i) habitat enhancement⁽³⁾ of onsite habitat;
 - (ii) insofar as there cannot be that enhancement, creation of onsite habitat;
 - (iii) insofar as there cannot be that creation, the availability of registered offsite biodiversity gain for allocation to the development;

(2) Section 78 was amended by section 17(2) of the Planning and Compulsory Purchase Act 1991, section 121(1), (2)(b), (3A) and (3B) of the Planning and Compulsory Purchase Act 2004, Paragraphs 1 and 3(a) and (b) of Schedule 10 and paragraphs 1 and 2 of Schedule 11 to the Planning and Compulsory Purchase Act 2008, section 123(1) and (3) of, and paragraphs 1 and 11 of Schedule 12 to, the Localism Act 2011, paragraphs 2 and 12 of Part 2 of Schedule 4 to the Infrastructure Act 2015, sections 45 and 47(1) of, and paragraph 7(1) and (2) of Schedule 7 to, the Planning (Wales) Act 2015, paragraphs 1 and 12 of Schedule 12 to the Housing and Planning Act 2016, and [S.I. 2014/2773](#). Section 78 is prospectively amended by section 113(1) and (5) of, and paragraph 1(1) and (12) of Schedule 9 to, the Levelling-up and Regeneration Act 2023 from a date and time to be appointed.

(3) The term “habitat enhancement” has the meaning given by paragraph 12(2) of Schedule 7A to the Town and Country Planning Act 1990.

- (iv) insofar as registered offsite biodiversity gain cannot be allocated to the development, the purchase of biodiversity credits.

Form and timing of submission

- 37B.** A biodiversity gain plan submitted to a planning authority must be submitted—
- (a) in writing;
 - (b) no earlier than the day after the day on which formal notification is given of the decision to grant planning permission.

Additional content of plan

37C.—(1) In addition to the matters referred to in paragraph 14(2) of Schedule 7A to the 1990 Act (biodiversity gain plan), and for the purposes of paragraph 14(3) of Schedule 7A to the 1990 Act (others matters to be included), a biodiversity gain plan must include the matters referred to in paragraphs (2) to (5).

- (2) A biodiversity gain plan must include—

- (a) the name and address of—
 - (i) the person completing, and
 - (ii) if different, the person submitting,the plan;

- (b) the reference number of the planning permission to which the plan relates;

- (c) a description of the development to which the plan relates;

- (d) a description of arrangements for maintenance of habitat enhancement to which paragraph 9(3) of Schedule 7A to the 1990 Act applies (habitat enhancement which must be maintained for at least 30 years after the development is completed) and arrangements for monitoring that maintenance;

- (e) subject to paragraph (3), a description of the actions to be taken for the purpose of applying the biodiversity gain hierarchy, including any reasons for not following the order of priority.

(3) Paragraph (2)(e) does not apply in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat.

(4) Where development is not to proceed in phases, the biodiversity gain plan must also include—

- (a) the relevant date, and if the relevant date is a date which is earlier than that specified in paragraph 5(2)(a) of Schedule 7A to the 1990 Act, the reasons for this;

- (b) the completed biodiversity metric calculation tool or tools (as the case may be), stating the publication date of that tool and showing how the values specified in the biodiversity gain plan have been calculated;

- (c) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—

- (i) a statement that such activities have been carried out;
- (ii) confirmation of the date immediately before those activities were so carried out;

- (iii) a completed biodiversity metric calculation tool, stating the publication date of that tool and showing the calculation of the biodiversity value of the onsite habitat on that date; and
 - (iv) any available supporting evidence for the date referred to in paragraph (ii) and for the value referred to in paragraph (iii);
 - (d) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (i) is on the land to which the plan relates, and
 - (ii) exists on the relevant date;
 - (e) pre-development plans—
 - (i) showing the location of onsite habitat including any irreplaceable habitat on the relevant date;
 - (ii) drawn to an identified scale and showing the direction of North;
 - (f) post-development plans—
 - (i) showing the location of onsite habitat including any irreplaceable habitat;
 - (ii) drawn to an identified scale and showing the direction of North;
 - (g) in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat, arrangements for compensation for any impact the development has on the biodiversity of the onsite habitat.
- (5) Where development is to proceed in phases—
 - (a) the biodiversity gain plan required before development may be begun in accordance with paragraph 13(3)(a) of the 1990 Act (as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024) (overall plan) must also include—
 - (i) the relevant date, and if the relevant date is a date which is earlier than that specified in paragraph 5(2)(a) of Schedule 7A to the 1990 Act, the reasons for this;
 - (ii) the completed biodiversity metric calculation tool or tools (as the case may be), stating the publication date of that tool and showing how the values specified in that biodiversity gain plan have been calculated;
 - (iii) if any activities of the type mentioned in paragraph 6 or 6A of Schedule 7A to the 1990 Act have been carried out on the land—
 - (aa) statement that such activities have been carried out,
 - (bb) confirmation of the date immediately before those activities were so carried out,
 - (cc) a completed biodiversity metric calculation tool, stating the publication date of that tool and showing the calculation of the biodiversity value of the onsite habitat on that date, and
 - (dd) any available supporting evidence for the date referred to in sub-paragraph (bb) and for the value referred to in sub-paragraph (cc);
 - (iv) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—

- (aa) is on the land to which the plan relates, and
 - (bb) exists on the relevant date;
 - (v) pre-development plans—
 - (aa) showing the location of onsite habitat including any irreplaceable habitat on the relevant date;
 - (bb) drawn to an identified scale and showing the direction of North;
 - (vi) in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat, arrangements for compensation for any impact the development has on the biodiversity of the onsite habitat;
- (b) the biodiversity gain plan for a phase of development required in accordance with paragraph 13(5)(a) of the 1990 Act (as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024) (phase plan) must also include—
 - (i) the reference number of any planning permission decision, other than the planning permission to which the biodiversity gain plan relates, which the person submitting the plan considers is relevant to the phase of development;
 - (ii) the completed biodiversity metric calculation tool or tools (as the case may be), stating the publication date of that tool and showing how the values specified in that biodiversity gain plan have been calculated;
 - (iii) a description of any irreplaceable habitat, corresponding to the descriptions in Table 1 or in column 1 of Table 2 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, that—
 - (aa) is on the land to which the plan relates, and
 - (bb) exists on the relevant date;
 - (iv) post-development plans for the phase of development—
 - (aa) showing the location of onsite habitat including any irreplaceable habitat;
 - (bb) drawn to an identified scale and showing the direction of North;
 - (v) information about the steps taken or to be taken to minimise the adverse effect of the phase of development on the biodiversity of the onsite habitat;
 - (vi) in relation to any part of the development to which the biodiversity gain plan relates where the onsite habitat of that part is irreplaceable habitat, arrangements for compensation for any impact the development has on the biodiversity of the onsite habitat.
- (6) In this article—
 - (a) “post-development biodiversity value of the onsite habitat of the phase of development”, and related expressions, have the same meaning as “post-development biodiversity value of the onsite habitat” in paragraphs 8 and 9 of Schedule 7A to the 1990 Act (post-development biodiversity value) but as if references in those paragraphs to “the onsite habitat” were references to “the onsite habitat on the land to which the phase of development relates”;
 - (b) a reference to a development proceeding in phases is a reference to a development where—

- (i) outline planning permission has been granted and the reservation of matters for subsequent approval has the effect of requiring or permitting development to proceed in phases, or
- (ii) any kind of planning permission has been granted and the grant is subject to conditions (whether requiring the subsequent approval of other matters or otherwise) having that effect.

Determination

37D.—(1) The planning authority must give written notice to the person submitting the biodiversity gain plan of its determination whether to approve that plan within—

- (a) the period of eight weeks beginning with the day after the day on which that plan is received by the planning authority, or
- (b) such longer period as is agreed, in writing, by the person submitting that plan and the planning authority.

(2) In determining whether to approve a biodiversity gain plan, the planning authority must take into account—

- (a) how the biodiversity gain hierarchy is to be applied, and
- (b) subject to paragraph (3), where the order of priority specified in that hierarchy is not to be applied—
 - (i) the reason for that, or
 - (ii) the absence of a reason.

(3) Paragraph (2) does not apply in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat.

(4) Where the planning authority that has given written notice under paragraph (1) is not the local planning register authority, the planning authority must, within five working days beginning with the day after the day of that written notice, send to the local planning register authority—

- (a) a copy of the biodiversity gain plan submitted under paragraph 13 of Schedule 7A to the 1990 Act, including all plans, drawings and other documents submitted with the biodiversity gain plan;
- (b) notice of the determination whether to approve the biodiversity gain plan including the date of that notice and the name of the planning authority.

(5) Where the planning authority makes a determination not to approve the biodiversity gain plan, the notice provided under paragraph (1) must state clearly and precisely their full reasons for the determination, specifying all elements of the biodiversity gain plan which are relevant to the determination.

(6) In this article—

- “the local planning register authority” has the same meaning as in article 40(1);
- “working day” means a day which is not a Saturday, Sunday or public holiday.

Appeals

37E.—(1) This article applies where a local planning authority—

- (a) makes a determination not to approve a biodiversity gain plan, or
- (b) does not give written notice of its determination whether to approve a biodiversity gain plan within the period required under article 37D(1).

(2) Where this article applies, a person who has submitted a biodiversity gain plan who wishes to appeal to the Secretary of State under section 78 of the 1990 Act must give notice of appeal to the Secretary of State by—

(a) serving on the Secretary of State within—

(i) the time limit specified in paragraph (3), or

(ii) such longer period as the Secretary of State may, at any time, allow,

a completed appeal form, obtained from the Secretary of State⁽⁴⁾, together with such of the documents specified in paragraph (4) as are relevant to the appeal, and

(b) serving on the planning authority referred to in paragraph (1) a copy of the completed appeal form mentioned in sub-paragraph (a), as soon as reasonably practicable, together with a copy of the documents mentioned in paragraph (4)(f) where that paragraph applies.

(3) The time limit mentioned in paragraph (2) is six months from—

(a) the date of the notice of the determination not to approve the biodiversity gain plan giving rise to the appeal, or

(b) where no such notice has been given, the expiry of the period specified under article 37D(1)(a) or (b), as the case may be.

(4) The documents mentioned in paragraph (2) are—

(a) a copy of the application for planning permission sent to the local planning authority, to which the biodiversity gain plan relates;

(b) all plans, drawings and other documents sent to the local planning authority relating to that application;

(c) all correspondence with the local planning authority relating to the determination whether to approve the biodiversity gain plan;

(d) the notice of the determination not to approve the biodiversity gain plan, if any;

(e) the biodiversity gain plan;

(f) subject to paragraph (5)—

(i) the full statement of case of the person who submitted the biodiversity gain plan (if they wish to make additional representations);

(ii) a statement of which procedure (written representations, a hearing or inquiry) the person who submitted the biodiversity gain plan considers should be used to determine the appeal;

(iii) a draft statement of common ground if the person submitting the biodiversity gain plan considers that the appeal should be determined through a hearing or an inquiry.

(5) The documents required in paragraph (4)(f) are not required to accompany the notice under paragraph (2) where a direction is given by the Secretary of State under section 321(3) of the 1990 Act (matters related to national security).

(6) The Secretary of State may refuse to accept a notice of appeal from the person who submitted the biodiversity gain plan if the completed appeal form required under paragraph (2)(a) and the documents required under paragraph (4) are not served on the Secretary of State within the time limit specified in paragraph (3).

(4) Hard copies of the appeal form may be obtained from the Department for Levelling Up, Housing and Communities, 2 Marsham Street, London, SW1P 4DF.

(7) The Secretary of State may provide, or arrange for the provision of, a website for use for such purposes as the Secretary of State thinks fit which—

- (a) relate to appeals under section 78 of the 1990 Act and this article, and
- (b) are capable of being carried out electronically.

(8) Where a person gives notice of appeal to the Secretary of State using electronic communications, the person is taken to have agreed—

- (a) to the use of such communications for all purposes relating to the appeal which are capable of being carried out electronically,
- (b) that the person's address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the person's notice of appeal, and
- (c) that the person's deemed agreement under this paragraph subsists until notice is given in accordance with article 46 that the person wishes to revoke the agreement.

(9) In this article, "draft statement of common ground" and "full statement of case" have the same meaning as in article 37(8) (appeals)."

20. In article 40 (register of applications)—

- (a) at the end of the heading insert "and biodiversity gain plans";
- (b) after paragraph (4), insert—

“(4ZA) Part 2 of the register must contain, in respect of every planning permission granted relating to the local planning register authority's area—

- (a) a copy of all the biodiversity gain plans submitted under paragraph 13 of Schedule 7A to the 1990 Act;
- (b) notice of the determination whether to approve each biodiversity gain plan including the date of that notice and the name of the planning authority.

(4ZB) Where the local planning register authority is not the planning authority in respect of a biodiversity gain plan, the requirement in paragraph (4ZA) only applies where the planning authority has sent the information required to the local planning register authority in accordance with article 37D(4).”.