

Draft Regulations laid before Parliament under sections 100(8) and 143(5)(b) of the Environment Act 2021, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2024 No. 0000

**ENVIRONMENTAL PROTECTION, ENGLAND
TOWN AND COUNTRY PLANNING, ENGLAND**

**The Biodiversity Gain Site Register (Financial
Penalties and Fees) Regulations 2024**

*Made - - - - - ***
Coming into force in accordance with regulation 1(2)*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 100(1), (4)(c) and (g) and (5)(f) and 143(1)(b) of the Environment Act 2021⁽¹⁾.
In accordance with sections 100(8) and 143(5)(b) of that Act, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

PART 1

Preliminary

Citation, commencement and extent

- 1.—(1) These Regulations may be cited as the Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024.
- (2) These Regulations come into force on the day on which the Biodiversity Gain Site Register Regulations 2024 come into force.
- (3) These Regulations extend to England and Wales.

(1) 2021 c. 30. See section 100(2) for the meaning of “biodiversity gain site”, and sections 100(11) and 118(1) for the meaning of expressions used in section 100(2).

Interpretation

2. In these Regulations, “the register operator” means the person required under regulation 3(2) of the Biodiversity Gain Site Register Regulations 2024 to maintain the biodiversity gain site register established under those Regulations.

PART 2

Financial penalties

Applications under the Biodiversity Gain Site Register Regulations 2024: penalty for supply of false or misleading information

3. The register operator may impose a financial penalty of £5000 on a person in accordance with this Part where the register operator is satisfied, on the balance of probabilities, that false or misleading information has been or was supplied to it by that person in connection with an application referred to in regulation 7(1) of the Biodiversity Gain Site Register Regulations 2024 (applications to register land in the biodiversity gain site register) made by that person.

Notice of intent to be given before imposing penalty

4.—(1) Before imposing a financial penalty on a person under this Part, the register operator must give that person notice of its intention to do so (a “notice of intent”).

(2) A notice of intent given to a person must—

- (a) inform the person that the register operator is satisfied as specified in regulation 3;
- (b) specify the information which the register operator is satisfied was false or misleading;
- (c) identify the application in connection with which that information has been or was supplied;
- (d) inform the person that the register operator intends to impose a financial penalty of £5000 on the person under this Part;
- (e) give details of the person’s right under regulation 5 to object to the imposition of the penalty.

Right to object to proposed financial penalty

5.—(1) A person to whom a notice of intent is given under regulation 4 may, within the period of 28 days beginning with the day after the day on which the notice is given, object to the imposition of the penalty to which the notice relates on the grounds that—

- (a) the information specified under regulation 4(2)(b) in the notice of intent was not false or misleading, or
- (b) there are other compelling reasons why the penalty should not be imposed.

(2) An objection under this regulation must—

- (a) be made in writing to the register operator, and
- (b) include any evidence which supports the objection.

Final decision to impose financial penalty

6.—(1) Where the register operator has given a notice of intent to a person under regulation 4, the register operator may impose a financial penalty on that person if it decides to do so within—

- (a) the period of 56 days beginning with the day on which the register operator receives an objection made in accordance with regulation 5, or
- (b) if no such objection is received, the period of 56 days beginning with the day after the day on which the period mentioned in regulation 5(1) ended.

(2) A financial penalty is imposed on a person under this Part by giving notice to that person informing that person of the register operator's decision to impose the penalty and requiring the penalty to be paid (a "final penalty notice").

(3) A final penalty notice must require the penalty to be paid within the period of 28 days beginning with the day after the day on which the final penalty notice was given.

(4) A final penalty notice must—

- (a) state that the amount of the penalty is £5000;
- (b) state the reasons for the imposition of the penalty;
- (c) state the period within which the penalty must be paid;
- (d) explain the consequences of not paying the penalty within that period;
- (e) provide information about how to pay the penalty;
- (f) contain information about the right of appeal under regulation 8.

Withdrawal of notice of intent or final penalty notice

7.—(1) The register operator may, at any time, withdraw a notice of intent or final penalty notice.

(2) The power in paragraph (1) is to be exercised by giving notice to the person to whom the notice of intent or final penalty notice was given.

Right of appeal against final penalty notice

8.—(1) A person on whom a financial penalty is imposed under regulation 6 may appeal to the First-tier Tribunal against the register operator's decision to impose the penalty.

(2) If a person appeals under this regulation, the final penalty notice is suspended until the appeal is finally determined or withdrawn.

(3) An appeal under this regulation—

- (a) is to be a re-hearing of the register operator's decision, but
- (b) may be determined having regard to matters of which the register operator was unaware.

(4) On an appeal under this regulation, the First-tier Tribunal may either quash or confirm the final penalty notice.

Penalty recoverable as a debt

9. A financial penalty imposed under this Part is recoverable as a civil debt due to the register operator.

Proceeds to be paid into the Consolidated Fund

10. The register operator must pay the proceeds of a financial penalty imposed under this Part into the Consolidated Fund.

General provision about notices under this Part

11.—(1) In this Part, "notice" means notice in writing.

- (2) A notice under this Part may be given to a person by—
- (a) sending it by post to the person at the person’s proper address, or
 - (b) sending it to the person by email to the person’s appropriate email address.
- (3) A notice given to a person by sending it to that person by email is to be treated as having been given to that person 24 hours after it was sent.
- (4) For the purposes of paragraph (2)—
- (a) a person’s proper address for a notice sent by post is (subject to paragraph (5)) the address which was included under regulation 8(2)(b) of the Biodiversity Gain Site Register Regulations 2024 in the application to which the notice relates;
 - (b) a person’s appropriate email address for a notice sent by email is (subject to paragraph (6)) the email address included under regulation 8(2)(c) of the Biodiversity Gain Site Register Regulations 2024 in the application to which the notice relates.
- (5) Where, since making the application to which the notice relates, the person who made the application has notified the register operator in writing of a change of address for—
- (a) receipt of notices sent by post under the Biodiversity Gain Site Register Regulations 2024 in connection with that application, or
 - (b) receipt of notices relating to that application sent by post under these Regulations,
- the person’s proper address for a notice under this Part relating to that application is whichever postal address that person has most recently provided in writing to the register operator, whether for receipt of notices in connection with that application or for receipt of notices under these Regulations relating to that application, or both.
- (6) Where, since making the application to which the notice relates, the person who made the application has notified the register operator in writing of a change of address for—
- (a) receipt of notices sent by email under the Biodiversity Gain Site Register Regulations 2024 in connection with that application, or
 - (b) receipt of notices relating to that application sent by email under these Regulations,
- the person’s appropriate email address for a notice under this Part relating to that application is whichever email address that person has most recently provided in writing to the register operator, whether for receipt of notices in connection with that application or for receipt of notices under these Regulations relating to that application, or both.
- (7) For the purposes of this regulation, a notice relates to an application if it relates to a financial penalty under this Part for the supply of false or misleading information in connection with the application.

PART 3

Fees

Fees for applications under the Biodiversity Gain Site Register Regulations 2024

12.—(1) A fee is payable to the register operator in respect of any application specified in column (2) of the table in the Schedule (fees for applications under the Biodiversity Gain Site Register Regulations 2024).

(2) The amount of the fee payable in respect of the application is the amount specified in the corresponding entry in column (3) of the table.

(3) The fee must be paid by the applicant before the end of the period of 28 days beginning with the day on which the application is received by the register operator.

(4) But if the applicant withdraws the application before paying the fee, no fee is payable under this regulation in respect of that application⁽²⁾.

PART 4

Review of regulatory provision

Requirement to carry out a review of the regulatory provision in Part 2

13.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provision contained in Part 2, and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before the end of the period of 5 years beginning with the day on which these Regulations come into force.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) Section 30(4) of the Small Business, Enterprise and Employment Act 2015⁽³⁾ requires that a report published under this regulation must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision,
- (b) assess the extent to which those objectives are achieved,
- (c) assess whether those objectives remain appropriate, and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act).

Date

Name
Parliamentary Under Secretary of State
Department for Environment, Food and Rural
Affairs

(2) For the withdrawal of applications under the Biodiversity Gain Site Register Regulations 2024 see regulations 7(5), 12(5), 17(11) and 24(6) of those Regulations.

(3) 2015 c. 26.

SCHEDULE

Regulation 12(1) and (2)

Fees for applications under the Biodiversity Gain Site Register Regulations 2024

<i>(1) Fee number</i>	<i>(2) Application for which fee is payable</i>	<i>(3) Amount of the fee</i>
1	Application referred to in regulation 7(1) of the Biodiversity Gain Site Register Regulations 2024 (application to register land in the biodiversity gain site register)	£639
2	Application referred to in regulation 12(2) of the Biodiversity Gain Site Register Regulations 2024 (application to record the allocation of habitat enhancement to a development in the biodiversity gain site register)	£45
3	Application referred to in regulation 17(1) of the Biodiversity Gain Site Register Regulations 2024 made on the grounds in regulation 17(2) (a) of those Regulations (application to amend information in the biodiversity gain site register which is incomplete or inaccurate as a result of modification of a conservation covenant or section 106 agreement)	£639
4	Application referred to in regulation 17(1) of the Biodiversity Gain Site Register Regulations 2024 made on the grounds in regulation 17(2)(b) or (c) of those Regulations (application to amend information in the biodiversity gain site register because habitat enhancement has ceased wholly or partly to be allocated to a development)	£45
5	Application referred to in regulation 17(1) of the Biodiversity Gain Site Register Regulations 2024 made on the grounds in regulation 17(2) (d) (application to amend information in the biodiversity gain site register which is incomplete or inaccurate for any reason not mentioned in regulation 17(2)(a), (b) or (c))	£639
6	Application referred to in regulation 24(2) of the Biodiversity Gain Site Register Regulations 2024 (application to have an entry removed from the biodiversity gain site register)	£89

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in connection with the biodiversity gain site register established under the Biodiversity Gain Site Register Regulations 2024 (“the Register Regulations”) and maintained by Natural England as the designated register operator under those Regulations.

Regulations 3 to 11 provide for the imposition of a financial penalty by the register operator where the register operator is satisfied, on the balance of probabilities, that false or misleading information has been or was supplied to it in connection with an application to register land in the biodiversity gain site register. Applications to register land in that register are provided for by regulation 7 of the Register Regulations. The amount of the penalty which may be imposed is £5000. The process for imposing a penalty includes an opportunity for objections to be made to the imposition of the penalty. Regulation 8 of these Regulations provides for appeals to the First-tier Tribunal against decisions to impose a penalty.

Regulation 12 and the Schedule set fees for applications under the Register Regulations. Regulation 12(3) provides for when and by whom they are payable.

Regulation 13 requires the Secretary of State to carry out periodic reviews of the regulatory provision contained in regulations 3 to 11, and for the publication of reports. “Regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015.

A full impact assessment has not been produced for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.