

**Changes to legislation:** Town and Country Planning Act 1990, PART 2 is up to date with all changes known to be in force on or before 20 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 7A

#### BIODIVERSITY GAIN IN ENGLAND

##### Textual Amendments

- F1** Sch. 7A inserted (3.11.2023 for specified purposes, 12.2.2024 for specified purposes) by Environment Act 2021 (c. 30), s. 147(3), Sch. 14 para. 2 (with s. 144); S.I. 2023/1170, reg. 2(d); S.I. 2024/44, reg. 2(1)(d)(2) (with regs. 3, 4)

### PART 2

#### CONDITION OF PLANNING PERMISSION RELATING TO BIODIVERSITY GAIN

##### Modifications etc. (not altering text)

- C1** Sch. 7A Pt. 2 applied (with modifications) (12.2.2024) by The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 (S.I. 2024/48), regs. 1(1), 3 (with reg. 4)
- C2** Sch. 7A Pt. 2 applied (with modifications) (12.2.2024) by The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (S.I. 2024/50), regs. 1(2), 3-8

##### *General condition of planning permission*

- 13 (1) Every planning permission granted for the development of land in England shall be deemed to have been granted subject to the condition in sub-paragraph (2).
- (2) The condition is that the development may not be begun unless—
- a biodiversity gain plan has been submitted to the planning authority (see paragraph 14), and
  - the planning authority has approved the plan (see paragraph 15).

##### *Biodiversity gain plan*

- 14 (1) For the purposes of paragraph 13(2)(a), a biodiversity gain plan is a plan which—
- relates to development for which planning permission is granted, and
  - specifies the matters referred to in sub-paragraph (2).
- (2) The matters are—
- information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat,
  - the pre-development biodiversity value of the onsite habitat,

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- (c) the post-development biodiversity value of the onsite habitat,
  - (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
  - (e) any biodiversity credits purchased for the development, and
  - (f) such other matters as the Secretary of State may by regulations specify.
- (3) The Secretary of State may by regulations make provision about—
- (a) any other matters to be included in a biodiversity gain plan;
  - (b) the form of a biodiversity gain plan;
  - (c) the procedure to be followed in relation to the submission of a biodiversity gain plan (including the time by which a plan must be submitted);
  - (d) persons who may or must submit a biodiversity gain plan.
- [ Section 327ZA applies to the power conferred by sub-paragraph (3) as if a <sup>F2</sup>(4) biodiversity gain plan were an “associated document” within the meaning of that section.]

#### **Textual Amendments**

- F2** Sch. 7A para. 14(4) inserted (25.4.2024) by [Levelling-up and Regeneration Act 2023 \(c. 55\)](#), **ss. 124(3), 255(3)(b)** (with [s. 247](#)); [S.I. 2024/452](#), [reg. 3\(i\)](#)

#### *Approval of biodiversity gain plan*

- 15 (1) For the purposes of paragraph [13\(2\)\(b\)](#) a planning authority to which a biodiversity gain plan is submitted must approve the plan if, and only if, it is satisfied as to the matters specified in sub-paragraph [\(2\)](#).
- (2) The matters are—
- (a) that the pre-development biodiversity value of the onsite habitat is as specified in the plan,
  - (b) that the post-development biodiversity value of the onsite habitat is at least the value specified in the plan,
  - (c) that, in a case where any registered offsite biodiversity gain is specified in the plan as allocated to the development—
    - (i) the registered offsite biodiversity gain is so allocated (and, if the allocation is conditional, that any conditions attaching to the allocation have been met or will be met by the time the development begins), and
    - (ii) the registered offsite biodiversity gain has the biodiversity value specified in the plan in relation to the development,
  - (d) that any biodiversity credits specified in the plan as purchased for the development have been so purchased,
  - (e) that the biodiversity gain objective is met, and
  - (f) any other matters specified in the plan under paragraph [14\(2\)\(f\)](#).

#### *Regulations about determinations*

- 16 The Secretary of State may make regulations as to—

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- (a) the procedure which a planning authority is to follow in determining whether to approve a biodiversity gain plan (including the time by which a determination must be made);
- (b) factors which may or must be taken into account in making such a determination;
- (c) appeals relating to such a determination.

#### *Exceptions*

- 17 Paragraph 13 does not apply in relation to—
- (a) development for which planning permission is granted—
    - (i) by a development order, or
    - (ii) under section 293A (urgent Crown development), or
  - (b) development of such other description as the Secretary of State may by regulations specify.

#### *Modifications for irreplaceable habitat*

- 18 (1) The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to any development for which planning permission is granted where the onsite habitat is “irreplaceable habitat” as defined in the regulations.
- (2) Regulations under this paragraph must make provision requiring, in relation to any such development, the making of arrangements for the purpose of minimising the adverse effect of the development on the biodiversity of the onsite habitat.
- (3) Regulations under this paragraph may confer powers and duties, including powers and duties in relation to the giving of guidance, on Natural England.

#### *Modifications for particular kinds of planning permission*

- 19 (1) The Secretary of State may by regulations make provision modifying the application of this Part of this Schedule in relation to—
- (a) the grant of outline planning permission, where the reservation of matters for subsequent approval has the effect of requiring or permitting development to proceed in phases, or
  - (b) the grant of any kind of planning permission, where the grant is subject to conditions (whether requiring the subsequent approval of any matters or otherwise) having that effect.
- (2) Regulations under this paragraph may include provision for a grant of planning permission referred to in sub-paragraph (1)(a) or (b) to be subject to conditions relating to meeting the biodiversity gain objective referred to in paragraph 2.
- 20 (1) The Secretary of State may by regulations make provision modifying or excluding the application of this Part of this Schedule in relation to development for which—
- (a) planning permission is granted under section 73A (planning permission for development already carried out), or
  - (b) planning permission is granted by an order under section 102 (orders requiring discontinuance of use etc).
- (2) Regulations under this paragraph may in particular include provision—

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- (a) for paragraph 13 not to apply in relation to the grant of planning permission referred to in sub-paragraph (1)(a) or (b);
  - (b) for the grant of any such planning permission to be subject to other conditions relating to meeting the biodiversity gain objective.
- (3) The conditions referred to in sub-paragraph (2)(b) may include conditions requiring—
- (a) habitat enhancement on the land to which the planning permission relates;
  - (b) the allocation of registered offsite biodiversity gain to any development for which the planning permission is granted;
  - (c) the purchase of biodiversity credits for any such development.

*Further application of this Part*

- 21 The Secretary of State may by regulations make provision to apply this Part of this Schedule in relation to development for which planning permission is granted under section 141 or 177(1), with such modifications or exclusions as may be specified in the regulations.]

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

- Act applied by 2023 asc 3 s. 79(2)
- Act applied by 2023 asc 3 s. 83(4)
- Act excluded by 2023 asc 3 s. 140(4)(b)

**Whole provisions yet to be inserted into this Act (including any effects on those provisions):**

- s. 7(3) inserted by 2023 c. 55 Sch. 17 para. 2(2)
- s. 7A(6) inserted by 2023 c. 55 Sch. 17 para. 2(4)
- s. 7ZA inserted by 2023 c. 55 Sch. 17 para. 2(3)
- s. 58B and cross-heading inserted by 2023 c. 55 s. 102(1)
- s. 59A(3)(ba) inserted by 2023 c. 55 Sch. 8 para. 4(b)
- s. 62B(5)(ca) inserted by 2023 c. 55 Sch. 17 para. 2(5)
- s. 70(2)(azb) inserted by 2023 c. 55 Sch. 6 para. 3(a)
- s. 70(3)(ca) inserted in earlier affecting provision 2016 c. 22, s. 5(8) by 2023 asc 3 Sch. 13 para. 194
- s. 70(3A) inserted by 2017 c. 20 Sch. 3 para. 2
- s. 70A(5A) inserted by 2023 c. 55 Sch. 6 para. 4(a)
- s. 70A(10)(11) inserted by 2023 c. 55 s. 110(4)(b)
- s. 70B(5A)(5B) inserted by 2023 c. 55 s. 110(5)(b)
- s. 73B inserted by 2023 c. 55 s. 110(2)
- s. 74(1C)(aa) inserted by 2023 c. 55 Sch. 6 para. 5(b)
- s. 75ZA and cross-heading inserted by 2016 c. 22 s. 155
- s. 83(1A)-(1C) amendment to earlier affecting provision 2004 c. 5, s. 45(2) by 2011 c. 20 Sch. 8 para. 14(4)(5) Sch. 25 Pt. 16
- s. 83(1A)-(1C) inserted by 2004 c. 5 s. 45(2)
- s. 83(2)-(2B) amendment to earlier affecting provision 2004 c. 5, s. 45(3) by 2011 c. 20 Sch. 8 para. 14(4)(5) Sch. 25 Pt. 16
- s. 83(2)-(2B) substituted for s. 83(2) by 2004 c. 5 s. 45(3)
- s. 83(4) inserted by 2004 c. 5 s. 45(4)
- s. 85(1A) inserted by 2004 c. 5 s. 45(6)
- s. 93(5)(6) inserted by 2017 c. 20 Sch. 3 para. 6
- s. 94(1)(e) and word inserted by 2023 c. 55 Sch. 9 para. 1(15)
- s. 102(1A) inserted by 2023 c. 55 Sch. 6 para. 9(b)
- s. 106A(9A) inserted by 2023 c. 55 s. 125
- s. 106ZA inserted by 2016 c. 22 s. 158(1)
- s. 106ZB inserted by 2016 c. 22 s. 159(1)
- s. 106ZB(2)(a) omitted by 2023 c. 55 s. 130(3)(b)
- s. 108(1A)(1B) inserted by 2015 c. 7 Sch. 4 para. 15(4)
- s. 108(3A) inserted by 2004 c. 5 Sch. 6 para. 6
- s. 108(3B)(ba) inserted by 2015 c. 7 Sch. 4 para. 15(6)
- s. 108(3B)(ba) word omitted by 2023 c. 55 Sch. 9 para. 1(16)(d)(i)
- s. 108(3B)(bb) inserted by 2023 c. 55 Sch. 9 para. 1(16)(d)(ii)
- s. 108(3DA) inserted by 2015 c. 7 Sch. 4 para. 15(7)
- s. 108(3DB) inserted by 2023 c. 55 Sch. 9 para. 1(16)(e)
- s. 141(6) inserted by 2017 c. 20 Sch. 3 para. 7
- s. 169(1)(a) words renumbered as s. 169(1)(a) by 2017 c. 20 s. 26(5)(a)
- s. 169(1)(b) inserted by 2017 c. 20 s. 26(5)(b)
- s. 170(8BA) inserted by 2017 c. 20 s. 26(6)
- s. 174(2AA)(b) words substituted by 2023 c. 55 s. 113(6)
- s. 208(5A) inserted by 2008 c. 29 Sch. 10 para. 9(2)

- s. 303(1ZZA) inserted by 2023 asc 3 Sch. 13 para. 87
- s. 303(10A) inserted by 2015 c. 7 Sch. 4 para. 19(3)
- s. 303(12) inserted by 2015 c. 7 Sch. 4 para. 19(4)
- s. 303A(1A)(za) inserted by 2023 c. 55 Sch. 8 para. 7(2)(a)
- s. 303A(9B) inserted by 2023 c. 55 Sch. 8 para. 7(4)
- s. 303A(10)(za) inserted by 2023 c. 55 Sch. 8 para. 7(5)
- s. 303A(12) inserted by 2023 c. 55 Sch. 8 para. 7(6)
- s. 303ZB inserted by 2023 c. 55 s. 134
- s. 314A inserted by 2023 asc 3 Sch. 13 para. 90
- s. 324(1A)(a) words in s. 324(1A) renumbered as s. 324(1A)(a) by 2023 c. 55 Sch. 9 para. 1(20)(a)
- s. 324(1A)(b) and word inserted by 2023 c. 55 Sch. 9 para. 1(20)(b)
- s. 333(3ZZAA) inserted by 2023 c. 55 Sch. 9 para. 1(21)(b)
- s. 333(3ZB) inserted by 2016 c. 22 s. 159(2)
- s. 333(3ZZA) inserted by 2023 c. 55 Sch. 9 para. 1(21)(a)
- Sch. 1 para. 5(4) inserted by 2023 c. 55 Sch. 17 para. 2(7)(c)
- Sch. 1 para. 7(10)(10A) substituted for Sch. 1 para. 7(10) by 2023 c. 55 Sch. 8 para. 11(2)
- Sch. 4B para. 11(3)-(5) inserted by 2017 c. 20 s. 7
- Sch. 4B para. 8(2)(fa) inserted by 2023 c. 55 s. 99(1)(b)
- Sch. 4B para. 8(2)(ca) inserted by 2023 c. 55 s. 102(2)(a)(ii)
- Sch. 4B para. 8(4A)(4B) inserted by 2023 c. 55 s. 102(2)(b)
- Sch. 4B para. 5(5)(za) inserted by 2023 c. 55 Sch. 6 para. 12(a)
- Sch. 4B para. 8(2)(da) inserted by 2023 c. 55 Sch. 6 para. 12(b)
- Sch. 4B para. 8(2)(ea) substituted for Sch. 4B para. 8(2)(e) by 2023 c. 55 s. 99(1)(a)
- Sch. 7 para. 12(1)-(1C) amendment to earlier affecting provision 2004 c. 5 s. 45(9) by 2011 c. 20 Sch. 8 para. 14(7)
- Sch. 7 para. 12(1)-(1C) substituted for Sch. 7 para. 12(1) by 2004 c. 5 s. 45(9)
- Sch. 9 para. 1(1A) inserted by 2023 c. 55 Sch. 6 para. 13(b)
- Sch. 9A inserted by 2016 c. 22 Sch. 13
- Sch. 13 para. 24A inserted by 2017 c. 20 s. 26(7)