

PART 6

NATURE AND BIODIVERSITY

Biodiversity gain in planning

98 Biodiversity gain as condition of planning permission

Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England.

99 Biodiversity gain in nationally significant infrastructure projects

Schedule 15 makes provision about biodiversity gain in relation to development consent for nationally significant infrastructure projects.

100 Biodiversity gain site register

- (1) The Secretary of State may by regulations make provision for and in relation to a register of biodiversity gain sites (“the biodiversity gain site register”).
- (2) A biodiversity gain site is land where—
 - (a) a person is required under a conservation covenant or planning obligation to carry out works for the purpose of habitat enhancement,
 - (b) that or another person is required to maintain the enhancement for at least 30 years after the completion of those works, and
 - (c) for the purposes of Schedule 7A to the Town and Country Planning Act 1990 the enhancement is made available to be allocated (conditionally or unconditionally, and whether for consideration or otherwise) in accordance with the terms of the covenant or obligation to one or more developments for which planning permission is granted.
- (3) Regulations under this section must provide for the information in the register to be accessible to members of the public.
- (4) Regulations under this section may in particular make provision about—
 - (a) the person who is to establish and maintain the biodiversity gain site register (who may be the Secretary of State, Natural England or another person);
 - (b) circumstances in which land is or is not eligible to be registered;
 - (c) applications to register land in the register;
 - (d) the information to be recorded in relation to any land that is registered;
 - (e) amendments to the register;
 - (f) removal of land from the register;
 - (g) fees payable in respect of any application under the regulations.
- (5) Provision under subsection (4)(c) may in particular include provision about—
 - (a) who is entitled to apply to register land in the biodiversity gain site register;
 - (b) the procedure to be followed in making an application;
 - (c) the information to be provided in respect of an application;
 - (d) how an application is to be determined;
 - (e) appeals against the rejection of an application;

- (f) financial penalties for the supply of false or misleading information in connection with an application.
- (6) Provision under subsection (4)(d) may in particular require the recording of the following in relation to any land registered in the biodiversity gain site register –
- (a) the location and area of the land;
 - (b) the works to be carried out on the land and the habitat enhancement to be achieved by them;
 - (c) information about the habitat of the land before the commencement of those works;
 - (d) the person who applied to register the land and (if different) the person by whom the requirement to carry out the works or maintain the habitat enhancement is enforceable;
 - (e) any development to which any of the habitat enhancement has been allocated;
 - (f) the biodiversity value (for the purposes of Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008) of any such habitat enhancement in relation to any such development.
- (7) Regulations under this section may amend subsection (2)(b) so as to substitute for the period for the time being specified there a different period of at least 30 years.
- (8) Regulations under this section making provision under subsection (4)(g) or (5)(f) are subject to the affirmative procedure.
- (9) Other regulations under this section are subject to the negative procedure.
- (10) The Secretary of State must keep under review –
- (a) the supply of land for registration in the biodiversity gain site register;
 - (b) whether the period specified in subsection (2)(b) or in paragraph 9(3) of Schedule 7A to the Town and Country Planning Act 1990 can be increased under subsection (7) or paragraph 9(4) of that Schedule without adversely affecting that supply.
- (11) In this section “development”, “habitat enhancement”, “planning obligation” and “planning permission” have the same meanings as in Schedule 7A to the Town and Country Planning Act 1990.

101 Biodiversity credits

- (1) The Secretary of State may make arrangements under which a person who is entitled to carry out the development of any land may purchase a credit from the Secretary of State for the purpose of meeting the biodiversity gain objective referred to in Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008.
- (2) A credit is to be regarded for the purposes of that Schedule as having such biodiversity value as is determined under the arrangements.
- (3) The arrangements may in particular include arrangements relating to –
- (a) applications to purchase credits;
 - (b) the amount payable in respect of a credit of a given value;
 - (c) proof of purchase;

- (d) reimbursement for credits purchased for development which is not carried out.
- (4) In determining the amount payable under the arrangements for a credit of a given value the Secretary of State must have regard to the need to determine an amount which does not discourage the registration of land in the biodiversity gain sites register.
- (5) The Secretary of State must publish information about the arrangements, including in particular the amount payable for credits.
- (6) The Secretary of State may use payments received under arrangements under this section for the following purposes (only) –
 - (a) carrying out works, or securing the carrying out of works, for the purpose of habitat enhancement (within the meaning of Part 7A of the Town and Country Planning Act 1990) on land in England;
 - (b) purchasing interests in land in England with a view to carrying out works, or securing the carrying out of works, for that purpose;
 - (c) operating or administering the arrangements.
- (7) The references to works in subsection (6) do not include works which the Secretary of State is required to carry out apart from this section by virtue of any enactment.
- (8) The Secretary of State must publish reports relating to the discharge of the Secretary of State’s functions under subsections (1) and (6).
- (9) A report must relate to a period not exceeding a year which –
 - (a) in the case of the first report, begins on the date on which Schedule 7A to the Town and Country Planning Act 1990 comes into force in relation to any development (within the meaning of Part 3 of that Act), and
 - (b) in the case of any subsequent report, begins on the day after the last day of the period to which the previous report related.
- (10) A report must set out –
 - (a) the total payments received under arrangements under this section in the period to which the report relates,
 - (b) how those payments have been used, and
 - (c) where those payments have been used for the purpose of carrying out or securing the carrying out of works for the purpose of habitat enhancement, the projected biodiversity value of the habitat enhancement at such time or times after completion of the works as the Secretary of State considers it appropriate to specify.

Biodiversity objective and reporting

102 General duty to conserve and enhance biodiversity

- (1) Section 40 of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) is amended in accordance with subsections (2) to (7).
- (2) In the heading, after “conserve” insert “and enhance”.

- (3) For subsections (A1) and (1) substitute –
- “(A1) For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.
- (1) A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.
- (1A) After that consideration the authority must (unless it concludes there is no new action it can properly take) –
- (a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and
- (b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.
- (1B) The requirements of subsection (1A)(a) may be satisfied (to any extent) by revising any existing policies and specific objectives for taking action to further the general biodiversity objective.
- (1C) The first consideration required by subsection (1) must be completed by the authority within the period of one year beginning with the day on which section 102 of the Environment Act 2021 comes into force.
- (1D) Any subsequent consideration required by subsection (1) must be completed no more than five years after the completion of the authority’s previous consideration.
- (1E) A determination required by subsection (1A)(a) must be made as soon as practicable after the completion of the consideration to which it relates.
- (1F) Nothing in this section prevents the authority from –
- (a) determining or revising policies and specific objectives at any time, or
- (b) taking action to further the general biodiversity objective at any time.”
- (4) In subsection (2) for “subsection (1)” substitute “subsections (1) and (1A)”.
- (5) After subsection (2) insert –
- “(2A) In complying with subsections (1) and (1A) the authority must in particular have regard to –
- (a) any relevant local nature recovery strategy, and
- (b) any relevant species conservation strategy or protected site strategy prepared by Natural England.
- (2B) The Secretary of State must issue guidance to local planning authorities as to how they are to comply with their duty under subsection (2A)(a) when complying with subsections (1) and (1A) in their capacity as such authorities.
- (2C) Guidance under subsection (2B) must be –

- (a) published by the Secretary of State in such manner as the Secretary of State thinks fit,
 - (b) kept under review, and
 - (c) revised where the Secretary of State considers it appropriate.
- (2D) The first guidance under subsection (2B) must be published by the Secretary of State within the period of two years beginning with the day on which section 102 of the Environment Act 2021 comes into force.”
- (6) For subsection (3) substitute –
 - “(3) The action which may be taken by the authority to further the general biodiversity objective includes, in particular, action taken for the purpose of –
 - (a) conserving, restoring or otherwise enhancing a population of a particular species, and
 - (b) conserving, restoring or otherwise enhancing a particular type of habitat.”
- (7) After subsection (5) insert –
 - “(6) This section has effect in relation to Her Majesty’s Revenue and Customs with the following modifications –
 - (a) the omission from subsection (A1) of the words “in England” and “in relation to England”;
 - (b) the omission from subsection (1) of the words from “which” to “England”.
 - (7) In this section references to England include the territorial sea adjacent to England.”
- (8) In section 41 of that Act (biodiversity lists and action (England)) –
 - (a) in subsection (1), after “conserving” insert “or enhancing”;
 - (b) in subsection (3) for “and (2)” substitute “and (1A)”.

103 Biodiversity reports

- (1) After section 40 of the Natural Environment and Rural Communities Act 2006 insert –
 - “40A Biodiversity reports**
 - (1) This section applies to –
 - (a) a local authority in England other than a parish council,
 - (b) a local planning authority in England, and
 - (c) a designated authority (see subsection (8)(a)).
 - (2) A public authority to which this section applies (“the authority”) must publish biodiversity reports in accordance with this section.
 - (3) A biodiversity report so published must contain –
 - (a) a summary of the action which the authority has taken over the period covered by the report for the purpose of complying with its duties under section 40(1) and (1A),

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- (b) a summary of the authority’s plans for complying with those duties over the period of five years following the period covered by the report,
 - (c) any quantitative data required to be included in the report by regulations under subsection (8)(b), and
 - (d) any other information that the authority considers it appropriate to include in the report.
- (4) If the authority is a local planning authority, its biodiversity report must also contain –
- (a) a summary of the action taken by the authority in carrying out its functions under Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain as condition of planning permission) over the period covered by the report,
 - (b) information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period, and
 - (c) a summary of the authority’s plans for carrying out those functions over the five year period following the period covered by the report.
- (5) A biodiversity report –
- (a) must specify the period covered by the report, and
 - (b) must be published within the period of 12 weeks following the last day of that period.
- (6) The authority’s first biodiversity report must cover a period chosen by the authority which –
- (a) is no longer than three years, and
 - (b) begins with the day on which the authority first becomes subject to the duty under subsection (2).
- (7) A subsequent biodiversity report made by the authority must cover a period chosen by the authority which –
- (a) is no longer than five years, and
 - (b) begins with the day after the last day of the period covered by its most recent biodiversity report.
- (8) The Secretary of State may by regulations –
- (a) provide for specified public authorities, or public authorities of a specified description, to be designated authorities for the purposes of this section;
 - (b) require biodiversity reports to include specified quantitative data relating to biodiversity in any area of land in England in relation to which the authority exercises any functions.
- In this subsection “specified” means specified in the regulations.
- (9) Public authorities with no functions exercisable in relation to England may not be designated under subsection (8)(a).
- (10) The power to make regulations under subsection (8) is exercisable by statutory instrument.

- (11) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Terms used in this section and section 40 have the same meaning as in that section.”

Local nature recovery strategies

104 Local nature recovery strategies for England

- (1) There are to be local nature recovery strategies for areas in England.
- (2) Together the local nature recovery strategies are to cover the whole of England.
- (3) The Secretary of State is to determine the areas within England to which individual local nature recovery strategies are to relate.
- (4) The area of a local authority, other than a county council, may not be split between local nature recovery strategies.
- (5) Section 40(2A) of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) makes provision about the duties of public authorities in relation to local nature recovery strategies.

105 Preparation of local nature recovery strategies

- (1) A local nature recovery strategy for an area (“the strategy area”) is to be prepared and published by the responsible authority.
- (2) The responsible authority for a local nature recovery strategy is such one of the following authorities as is appointed by the Secretary of State –
 - (a) a local authority whose area is, or is within, the strategy area;
 - (b) the Mayor of London;
 - (c) the mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
 - (d) a National Park authority in England;
 - (e) the Broads Authority;
 - (f) Natural England.
- (3) A local nature recovery strategy is to be reviewed and republished from time to time by the responsible authority.
- (4) The Secretary of State may by regulations make provision about the procedure to be followed in the preparation and publication, and review and republication, of local nature recovery strategies.
- (5) Regulations under this section may, for example, include provision –
 - (a) requiring the provision of information by a local authority whose area is, or is within, the strategy area but which is not the responsible authority;
 - (b) for a local nature recovery strategy to be agreed by all of the local authorities whose areas are within the strategy area;