STATUTORY INSTRUMENTS

2026 No. 790

ENVIRONMENTAL PROTECTION, ENGLAND

TOWN AND COUNTRY PLANNING, ENGLAND

The Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026

Made - - - -	*9th July 2026*
Laid before Parliament	*13th July 2026*
Coming into force - -	*6th August 2026*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 59(2)(b), 333(2A), (2B), (7) and (8) of, and paragraphs 14(3)(a) and 17 of Schedule 7A to the Town and Country Planning Act 1990(**a**).

PART 1

Introductory

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026.

(2) These Regulations come into force on 6th August 2026.

(3) These Regulations extend to England and Wales.

(**a**) 1990 c. 8; subsection (2A) was inserted into section 333 by paragraph 14(2) of Schedule 6 to the Planning and Compulsory Purchase Act 2004 (c. 5); Schedule 7A was inserted by section 98 of, and paragraph (2) of Schedule 14 to, the Environment Act 2021 (c. 30).

PART 2

Amendment of the Town and Country Planning (Development Management Procedure) (England) Order 2015

Amendment of the Town and Country Planning (Development Management Procedure) (England) Order 2015

2. In article 37A of the Town and Country Planning (Development Management Procedure) (England) Order 2015(**a**)(meaning of biodiversity gain hierarchy)—

(a) in sub-paragraph (b) for "in relation to any onsite habitat which is adversely affected by the development" substitute "in relation to any onsite habitat which is adversely affected by major development".

(b) after sub-paragraph (b) insert—

"(c) in relation to any onsite habitat which is adversely affected by development which is not major development, compensating for that adverse affect by—

(i) habitat enhancement of onsite habitat, creation of onsite habitat or the availability of registered offsite biodiversity gain for allocation to that development;

(ii) insofar as none of the actions in sub-paragraph (i) can be done, the purchase of biodiversity credits.".

PART 3

Amendment of the Biodiversity Gain Requirements (Exemptions) Regulations 2024

Amendment of the Biodiversity Gain Requirements (Exemptions) Regulations 2024

3. In the Biodiversity Gain Requirements (Exemptions) Regulations 2024(**b**)—

(a) after regulation 7 (biodiversity gain site) insert—

"Development no larger than 0.2 hectares

7A.—(1) The biodiversity gain planning condition does not apply in relation to planning permission(**c**) for development which meets the first and second conditions.

(2) The first condition is that the development does not impact an onsite priority habitat.

(3) The second condition is that the development is carried out on a site which has an area no larger than 0.2 hectares.

(4) The exemption in paragraph (1) does not apply in relation to planning permission where the application for planning permission was made before 6th August 2026.

(5) The exemption in paragraph (1) does not apply in relation to a section 73 planning permission where—

(a) the application for the original planning permission to which the section 73 planning permission relates was made before 6th August 2026; or

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(**a**) S.I. 2015/595; article 37A was inserted by S.I. 2024/50. There are others amendments none of which are relevant.
(**b**) S.I. 2024/47.
(**c**) See section 336(1) of the Town and Country Planning Act 1990 (c. 8) for the meaning given to "planning permission".

(b) the original planning permission to which the section 73 planning permission relates was granted before 6th August 2026.

(6) In this regulation—

(a) "original planning permission to which the section 73 planning permission relates" has the same meaning as in regulation 3;

(b) "priority habitat" has the same meaning as in regulation 4(**a**);

(c) "section 73 planning permission" has the same meaning as in regulation 3;

(d) a habitat is impacted where the habitat is lost or degraded such that there is a decrease in the biodiversity value(**b**) of that habitat.

Temporary development

7B.—(1) The biodiversity gain planning condition does not apply in relation to planning permission for development which meets the first, second and third conditions.

(2) The first condition is that the development does not impact an onsite priority habitat.

(3) The second condition is that the whole of the development for which the planning permission is granted consists solely of temporary development.

(4) The third condition is that the specified period does not exceed five years.

(5) The exemption in paragraph (1) does not apply in relation to planning permission where the application for planning permission was made before 6th August 2026.

(6) The exemption in paragraph (1) does not apply in relation to a section 73 planning permission where—

(a) the application for the original planning permission to which the section 73 planning permission relates was made before 6th August 2026; or

(b) the original planning permission to which the section 73 planning permission relates was granted before 6th August 2026.

(7) The exemption in paragraph (1) does not apply in relation to planning permission for temporary development where the effect of that planning permission, when taken together with any earlier grant or grants of planning permission for the same temporary development, is that the total of the specified periods exceeds five years.

(8) For the purposes of this regulation—

(a) "original planning permission to which the section 73 planning permission relates" has the same meaning as in regulation 3;

(b) "priority habitat" has the same meaning as in regulation 4;

(c) "section 73 planning permission" has the same meaning as in regulation 3;

(d) "specified period" means the period specified in the condition imposed on the grant of planning permission at the end of which—

(i) any buildings or works authorised by the permission are required to be removed;

(ii) any use of the land authorised by the permission is required to be discontinued; and

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(**a**) See the list published at https://www.gov.uk/government/publications/habitats-and-species-of-principal-importance-in-eng land. A hard copy of the list is available from the DEFRA Helpline address given at the end of the explanatory note below.

(**b**) The term "biodiversity value" means the value calculated in accordance with paragraphs 3 and 4 of Schedule 7A to the Town and Country Planning Act 1990.

(iii) any works to reinstate the land are required to be completed.

(e) "temporary development" means development for which planning permission is granted subject to a condition imposed under section 72(1)(b) of the Town and Country Planning Act 1990;

(f) a habitat is impacted where the habitat is lost or degraded such that there is a decrease in the biodiversity value of that habitat.".

(b) omit regulation 8.

PART 4

Transitional and Saving Provision

Transitional and Saving Provision

4.—(1) Article 37A of the Town and Country Planning (Development Management Procedure) (England) Order 2015 continues to have effect as if it had not been amended by regulation 2 for the purpose of a biodiversity gain plan which relates to—

(a) planning permission where the application for planning permission was made before 6th August 2026; or

(b) a section 73 planning permission where the application for planning permission was made on or after 6th August 2026 and where—

(i) the application for the original planning permission to which the section 73 planning permission relates was made before 6th August 2026; or

(ii) the original planning permission to which the section 73 planning permission relates was granted before 6th August 2026.

(2) Notwithstanding the amendment made by regulation 3(b), regulation 8 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024 continues to have effect, in relation to planning permission, in any case where the application for the planning permission was made before 6th August 2026.

(3) The biodiversity gain planning condition does not apply in relation to a section 73 planning permission where—

(a) the application for planning permission was made on or after 6th August 2026; and

(b) the biodiversity gain planning condition did not apply to the original planning permission to which the section 73 planning permission relates by virtue of the exemption in regulation 8 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024 as that regulation had effect immediately before the amendment made by regulation 3(b).

(4) In this regulation—

"biodiversity gain planning condition" means the condition referred to in paragraph 13 (general condition of planning permission) of Schedule 7A to the Town and Country Planning Act 1990;

"original planning permission to which the section 73 planning permission relates" means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions;

"section 73 planning permission" means planning permission granted on an application made under section 73 of the Town and Country Planning Act 1990 (determination of applications to develop land without compliance with conditions previously attached).

Mary Creagh
Parliamentary Under-Secretary of State
9th July 2026 Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 2 of these Regulations amends Part 7A of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (S.I. 2015/595, "the 2015 Order"), which makes provision about the form, timing, additional content, determination and appeals against refusal, or non-determination, of biodiversity gain plans.

Regulation 2 amends article 37A of the 2015 Order. This modifies the biodiversity gain hierarchy so that, for development which is not major development, the creation of onsite habitat, enhancement of onsite habitat and the use of registered offsite gains are at the same level of preference, with the purchase of biodiversity credits remaining a last-resort option.

Part 3 of these Regulations modifies the Biodiversity Gain Requirements (Exemptions) Regulations 2024 (S.I. 2024/47, "the 2024 Regulations") which exempt certain developments from meeting the biodiversity gain requirement that would otherwise be imposed as a general condition of planning permission.

Regulation 3 introduces two new exemptions. The first applies to development no larger than 0.2 hectares. The second applies to temporary development permitted for a period of five years or less. Both exemptions are subject to exceptions. It also removes the existing exemption for certain self-build and custom build development.

Part 4 makes transitional and saving provision. It provides that article 37A of the 2015 Order and regulation 8 of the 2024 Regulations continue to apply, notwithstanding their amendment, in certain cases.

An Impact Assessment for these Regulations has been produced and is available at www.gov.uk or from the DEFRA Helpline, Seacole Building, 2 Marsham Street, London SW1P 4DF.

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