EXPLANATORY MEMORANDUM TO

THE BIODIVERSITY GAIN (TOWN AND COUNTRY PLANNING) (AMENDMENTS AND TRANSITIONAL PROVISIONS) (ENGLAND) REGULATIONS 2026

2026 No. 790

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for the Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Mary Creagh CBE MP, Parliamentary Under-Secretary of State at Defra confirms that this Explanatory Memorandum meets the required standard.

2.2 Nick Barter, Deputy Director for Land Use at Defra confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Richard White at Defra can be contacted by email at the following address with any queries regarding the instrument: BNG.Correspondence@defra.gov.uk mailto: Seacole Building, 2 Marsham Street, London, SW1P 4DF. Alternatively, the department can be contacted by telephone: 03459 33 55 77.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Biodiversity Net Gain ("BNG") requires development (with some exceptions) to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.

4.2 **Biodiversity Gain Hierarchy:** The hierarchy sets out a stepped approach to the actions to be taken by developers in order of priority: firstly avoiding adverse effects of the development to distinctive habitats (with a habitat distinctiveness score equal to or higher than four as set out in the biodiversity metric) or in so far as adverse effects cannot be avoided mitigating them; in relation to any onsite habitat which is adversely effected, compensating for that effect by habitat enhancement; so far as there cannot be that enhancement, creation of onsite habitat, so far as there cannot be that creation, the availability of registered offsite biodiversity gain; and finally so far as that offsite habitat enhancement cannot be secured, purchasing biodiversity credits. This requirement does not apply in respect of onsite habitat which is irreplaceable habitat. This order of preference is called 'the biodiversity gain hierarchy' and developers must follow this order of preference.

4.3 Part 2 of this instrument amends The Town and Country Planning (Development Management Procedure) (England) Order 2015 to amend the biodiversity gain hierarchy for development which is not major development (small development) to place onsite habitat enhancement and creation on the same preference as registered offsite biodiversity gains.

4.4 **Exemptions:** There are specified exemptions to BNG introduced through the Biodiversity Gain Requirements (Exemptions) Regulations 2024. Part 3 of this instrument amends those regulations.

4.5 **New exemption for development of sites up to 0.2 hectares:** This instrument introduces a new exemption for development on a site area of 0.2 hectares and below, where no onsite priority habitats are impacted. This only applies to applications for planning permissions made after the instrument comes into force. This exemption does not apply to section 73 planning permissions where the original planning permission to which the section 73 planning permission relates was applied for or granted before this instrument comes into force.

4.6 **Temporary Development:** This instrument introduces a new exemption for development which meets the definition of temporary development. This exemption only applies where the development consists solely of temporary development, does not impact any onsite priority habitat and **is subject to a requirement that the development is removed and the land reinstated within a period not exceeding 5 years.** This only applies to applications for planning permission made after the instrument comes into force. This exemption does not apply to section 73 planning permissions where the original planning permission to which the section 73 planning permission relates was applied for or granted before this instrument comes into force. This exemption does not apply where a series of planning permissions are granted for the same temporary development and taken together the period within which the development would be removed and the land reinstated exceeds 5 years.

4.7 **Self-build and custom build exemption:** This instrument removes the exemption for small scale self and custom build developments following feedback that this exemption is difficult to implement and enforce.

4.8 Part 4 of this instrument puts transitional and saving provisions in place. These provide that the amendments to the biodiversity gain hierarchy apply only in relation to biodiversity gain plans for planning permissions where the application is made on or after this instrument comes into force. The previous version of article 37A continues to apply for biodiversity gain plans relating to applications made before the coming into force date and for section 73 planning permissions where the original planning permission to which the section 73 planning permission relates was applied for or granted before the coming into force date.

4.9 Part 4 also ensures the exemption for self and custom build development is available for applications made before the coming into force date and exempts section 73 planning permissions from the biodiversity net gain planning condition where the original planning permission to which the section 73 planning permission relates was exempt by virtue of the self and custom build exemption.

Where does the legislation extend to, and apply?

4.10 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.11 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only. This is because the biodiversity gain regime introduced by the Environment Act 2021 relates only to planning permission for the development of land in England.

5. Policy Context

What is being done and why?

5.1 Biodiversity net gain became a mandatory requirement in early 2024 for new planning applications, subject to specified exemptions. Evidence from implementation to date suggests the policy is broadly working as intended. However, there has been evidence that some of the smallest developments have found BNG challenging, both in terms of administration, as well as compliance costs.

5.2 Following public consultation, this legislation is designed to alleviate those challenges with an exemption for the smallest developments and temporary development, plus make it easier for small developers to access the offsite market.

What was the previous policy, how is this different?

5.3 BNG applies to all new applications for planning permission, other than the prescribed exceptions set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and development exempted under the Environment Act 2021.

5.4 This new legislation removes an exemption for small scale self and custom build development, meaning that unless covered by an alternative exemption, these developments must deliver BNG on new planning applications after this instrument has come into force. It also introduces two new exemptions for minor development of 0.2 hectares and below and time limited temporary development, meaning new applications that fall into these exemptions will no longer have to deliver BNG.

5.5 Previously all BNG eligible development had to follow the priority set out in the biodiversity gain hierarchy, this instrument modifies the hierarchy for development that is not major development (small developments) to make it easier for these developments to access offsite biodiversity gains.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations relate to mandatory BNG which was introduced by sections 98 to 101 of, and Schedule 14 to, the Environment Act 2021.

6.2 Schedule 14 to that Act inserts new Schedule 7A into the Town and Country Planning Act 1990 ("Schedule 7A"). Schedule 7A has the effect that (with some exceptions) every grant of planning permission in England is deemed to have been granted subject to a condition that development may not begin until a biodiversity gain plan, with certain specified content, has been submitted to and approved by the planning authority. The purpose of this is to ensure that the "biodiversity gain objective" is met in relation to the development. Paragraph 2 of Schedule 7A explains that this objective is met if the biodiversity value attributable to the development exceeds the pre development biodiversity value of habitat on the land to which the planning permission relates by at least 10%.

6.3 Paragraph 17 of Schedule 7A provides for regulations to prescribe categories of development to be exempt from the requirement mentioned in paragraph 6.2. The Biodiversity Gain Requirements (Exemptions) Regulations 2024 do this.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra consulted on improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development in the summer of 2025. A total of 25,024 responses to the consultation were received, and a government response was published in April 2026[1]. Defra also held a series of stakeholder workshops in June and July 2025. This provided Defra with valuable, in-depth feedback prior to the consultation closing.

7.2 BNG is an England only policy.

8. Applicable Guidance

8.1 Defra BNG guidance is published.[2] There is also MHCLG Planning Practice Guidance published on BNG.[3] Guidance will be updated to coincide with the SI coming into force.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is that there will be cost savings for some smaller developers, but also conversely some impact on stakeholders who have invested in the BNG offsite market, including habitat banks and BNG tech companies.

9.3 The legislation does impact small or micro businesses. It means that some smaller developers will no longer have to meet mandatory BNG requirements and will have associated cost and admin savings.

9.4 There will be some impact on the public sector. Local Planning Authorities will benefit from reduced administrative burden, as a substantial volume of low-impact applications would no longer require detailed ecological assessment, allowing scarce ecological capacity to be focused on larger developments where biodiversity impacts are more material.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through statutory review.

10.2 The instrument does not include a statutory review clause. A statutory review clause is included in the existing Biodiversity Gain Exemptions Regulations 2024 and the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments)

[1] https://www.gov.uk/government/consultations/improving-the-implementation-of-biodiversity-net-gain-for-minor-medium-and-brownfield-development/outcome/government-response-and-summary-of-responses.
[2] https://www.gov.uk/government/collections/biodiversity-net-gain.
[3] https://www.gov.uk/guidance/biodiversity-net-gain.

(England) Regulations 2024 which inserted article 37A into the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts.