

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT BIODIVERSITY GAIN (TOWN AND
COUNTRY PLANNING) (CONSEQUENTIAL
AMENDMENTS) REGULATIONS 2024

DRAFT BIODIVERSITY GAIN SITE REGISTER
(FINANCIAL PENALTIES AND FEES)
REGULATIONS 2024

Monday 8 January 2024

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The Committee consisted of the following Members:

Chair: SIR GRAHAM BRADY

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|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| † Blomfield, Paul (<i>Sheffield Central</i>) (Lab) | † Pennycook, Matthew (<i>Greenwich and Woolwich</i>) (Lab) |
| † Bruce, Fiona (<i>Congleton</i>) (Con) | † Pow, Rebecca (<i>Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs</i>) |
| † Cairns, Alun (<i>Vale of Glamorgan</i>) (Con) | † Saxby, Selaine (<i>North Devon</i>) (Con) |
| † Carden, Dan (<i>Liverpool, Walton</i>) (Lab) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Fabricant, Michael (<i>Lichfield</i>) (Con) | † Wheeler, Mrs Heather (<i>South Derbyshire</i>) (Con) |
| † Gardiner, Barry (<i>Brent North</i>) (Lab) | † Winter, Beth (<i>Cynon Valley</i>) (Lab) |
| † Glindon, Mary (<i>North Tyneside</i>) (Lab) | |
| † Loder, Chris (<i>West Dorset</i>) (Con) | |
| † Loughton, Tim (<i>East Worthing and Shoreham</i>) (Con) | |
| † Maskell, Rachael (<i>York Central</i>) (Lab/Co-op) | Jack Edwards, <i>Committee Clerk</i> |
| † Morrissey, Joy (<i>Lord Commissioner of His Majesty's Treasury</i>) | † attended the Committee |

Second Delegated Legislation Committee

Monday 8 January 2024

[SIR GRAHAM BRADY *in the Chair*]

Draft Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024

6 pm

The Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs (Rebecca Pow): I beg to move,

That the Committee has considered the draft Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024.

The Chair: With this it will be convenient to discuss the draft Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024.

Rebecca Pow: It is an absolute pleasure to have you in the Chair, Sir Graham, for our first debate after the recess. Welcome, all, back from recess. As you can hear, there is a buzz of excitement about this statutory instrument. [HON. MEMBERS: “Hear, hear.”] It is an important moment for us.

The statutory instruments have been grouped as they are part of a package of regulations that will work together to introduce the new framework for mandatory biodiversity net gain. Biodiversity net gain is a key policy delivered by the Environment Act 2021, which I am very proud to have taken through the House, but some of the policy involves amendments to the planning system. I will speak to both instruments together, given their interlinks, but I say up front to you, Chair, and to the shadow Minister, the hon. Member for Greenwich and Woolwich, that I do not profess to be an expert in the intricacies of the planning system. I therefore commit to writing to the hon. Gentleman if he raises points that need clarification.

As I say, these instruments form part of a package of SIs that commence the new, world-leading biodiversity net gain requirement. I know that we keep saying that, but this genuinely is a piece of world-leading legislation, which is why it is so exciting that it is finally coming into operation. This new approach to development and land management was legislated for in the Environment Act 2021, and had strong support, I am pleased to say, from across the House. It aims to leave the natural environment in a measurably better state than it was before, by requiring a 10% net gain for biodiversity from each eligible grant of planning permission. Those gains must be delivered through on-site habitat enhancement or creation where possible; otherwise, they can be delivered through off-site enhancements, by purchasing units from the market, or, in the last resort, through purchasing statutory credits sold by the Government.

A public consultation on the policy and the implementation of biodiversity net gain was held in 2022; the Government response, which was published at the

beginning of 2023, confirmed the policy intention of mandatory biodiversity net gain and informed the drafting of these regulations.

I turn to what the draft Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024 do. The Environment Act gives the Secretary of State for Environment, Food and Rural Affairs the power to make provision for a register of biodiversity gain sites. The core purpose of that publicly available register is to record allocations of off-site biodiversity gains to developments. The register will be established by the Biodiversity Gain Site Register Regulations 2024. The detail of how the register will operate—for instance, the information that landowners will need to provide to register their land—will be set out in those regulations, and we have published them already, in draft, ahead of the signing. We will lay them before Parliament next week, as part of the second package of SIs, which will be made under the negative procedure.

The instrument makes provision for the imposition of a financial penalty and the payment of fees relating to applications to that register. It allows for financial penalties to ensure that the biodiversity gain site register contains accurate information. Those penalties will encourage compliance, deter individuals from submitting incorrect information and remove illicit financial benefit—for example, through cost avoidance.

Rachael Maskell (York Central) (Lab/Co-op): I wish the regulations success, but how has the Minister determined whether the penalties, which are incredibly small compared with the value of land, will have their due effect?

Rebecca Pow: Obviously, enforcement and monitoring are really important. We consulted on that, and Natural England could impose a £5,000 penalty if it found that incorrect information was submitted. In all the stakeholder engagement that took place, it was pretty much agreed that that was a suitable level of penalty. There is also a need to report on how the biodiversity is going, and how the system is building up. The first report is due from the relevant authorities on 1 January 2026—my officials will let me know if I have got that date wrong. A whole system has been built up to ensure that the process works.

The instrument also provides for fees to be charged for different applications to the register. The applications include gain site registration amendment applications, and applications for the allocation of habitat enhancements to development. The fees have been set to achieve cost recovery for the set-up and maintenance of the register. Developers are not obliged to use the biodiversity net gain register, and should first aim to achieve biodiversity gains on site before turning to any kind of off-site gains. Landowners who choose to supply off-site gains to developers must apply to register their land, and we expect that they will do so only if the benefits of selling units outweigh the costs. Without the regulations setting the requirement for fees to be paid, and the amount to be paid, the register would not achieve cost recovery, and there would be a significant cost to the Department.

I turn to the Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024, ably drafted by the Department for Levelling Up, Housing and Communities. Obviously, there has been a close working relationship between that Department and the Department for Environment, Food and Rural Affairs.

The Environment Act 2021 amended the Town and Country Planning Act 1990 to make provision for biodiversity net gain in the planning system by adding new schedule 7A, which sets out the statutory basis for the 10% biodiversity gain objective and metric, and the general biodiversity gain condition that will apply to planning permissions. It also made consequential changes to other parts of the Town and Country Planning Act.

These regulations will make further consequential changes. First, they provide rules in schedule 7A for determining the local planning authority responsible for the approval of a biodiversity gain plan required under the general biodiversity gain condition. Secondly, they further amend section 73 of the 1990 Act, which enables the variation of conditions of previous planning permission to cover circumstances in which an earlier biodiversity gain plan is to be regarded as approved where the development's on-site habitat is irreplaceable. Finally, they make amendments to section 88 of the 1990 Act for the purpose of appeals against determinations by planning authorities in respect of the biodiversity gain plan. These are technical amendments to ensure that the provisions for the biodiversity net gain in the 1990 legislation work.

In conclusion, I emphasise that the regulations are essential to the successful delivery of the new mandatory net gain requirement, which will help to deliver much-needed gains for nature. Once these regulations are approved by both Houses, we will lay before Parliament the rest of the biodiversity net gain regulations, which we have already published in draft. I commend the instruments to the Committee.

6.10 pm

Matthew Pennycook (Greenwich and Woolwich) (Lab): It is a pleasure to serve with you in the Chair, Sir Graham. I thank the Minister for her explanation of the instruments. We welcome both sets of regulations, which are integral to rolling out the new biodiversity net gain framework and integrating it with the planning system.

Although both instruments are uncontroversial, I will take this opportunity to raise three concerns with the Minister that arise from them, relating to how the new framework will operate in practice. The first relates to outcomes. I am sure the Minister agrees that, when it comes to BNG, we should always aim for the optimum outcome in terms of biodiversity value. The statutory biodiversity metric is intended to provide a rigorous and transparent framework for assessing such value, and it is designed to ensure that the focus is on the quality of land used for mitigation rather than the quantity.

However, given that BNG can be achieved in a number of different ways, there is a clear risk that sub-optimal outcomes could be produced simply because they are easier or cheaper for developers to achieve. Provided everything permitted on the biodiversity gain site register is of high quality, it should eliminate that risk for off-site BNG commitments secured via units on the market. However, the risk will remain for off-site offsetting where developers use their own land, outside the development site. That is because—if I have understood the instruments correctly—they are under no obligation to register plans in such instances, and monitoring and enforcement will fall to overstretched local authorities.

Will the Minister tell us how the Government intend to guarantee that all kinds of offsetting will prioritise high-quality habitats with the greatest biodiversity potential, rather than lower-quality habitats that might be easier and cheaper to set up and maintain?

The second concern relates to habitat monitoring and maintenance. The Environment Act makes it clear that habitats should be secured for a minimum of 30 years and that, when delivering BNG, the relevant planning obligations or conservation covenants should hold for at least the same period. Off-site land used for BNG, which is recorded and verified on the biodiversity gain site register, can obviously be effectively monitored. However, the onus for monitoring and enforcing on-site improvements will lie with local authorities. Given that management plans for development are not always monitored or enforced appropriately, can the Minister give us a sense of how the Government plan to ensure that local authorities consistently maintain improvements in biodiversity value over the long term?

The third concern relates to local planning authorities themselves. I have mentioned them several times, because the effective operation of the new framework will rely heavily on LPAs being able to carry out their new duties and obligations, whether that is scrutinising individual biodiversity gain plans or reporting on BNG delivery more widely. The Government committed to funding all new burdens on local authorities arising from the Environment Act, and have provided transitional funding for LPAs to prepare for the mandatory net gain requirement up to the end of the 2023-24 financial year. Will the Minister tell us when further funding, beyond the current grant period, will be confirmed, and give us a sense of what steps her Department and the Department for Levelling Up, Housing and Communities are taking to help LPAs to secure the skills and expertise they are likely to need to meet the requirements of mandatory BNG? [*Interruption.*]

The Chair: Minister?

6.13 pm

Rebecca Pow: Thank you, Sir Graham; as you can see, I was trying to scribble down those quite detailed questions. I thank the shadow Minister for supporting the statutory instruments, which, as he will realise, will be important not only for improving our developments and the way we live, but for restoring nature. They are going to be game-changing for our environment.

First, I want to clarify the date that I referenced for when local authorities will be required to report on their biodiversity net gain actions. The first report must be submitted in January 2026, and from then on it will be five-yearly. That addresses some of the points that the shadow Minister raised about whether the quality of the net gain will be good enough. The reporting requirement will make that transparent. That is one of the ways that we will be able to see that this is working and that the right nature is being delivered.

Of course, there is a whole process for developers to calculate how much nature they need to put back and to work out the credits. Natural England has a whole system for calculating biodiversity net gain credits. As I am sure the hon. Gentleman is aware, there has been a huge amount of engagement for a number of years with

[Rebecca Pow]

stakeholders, local authorities, developers, Natural England and the Future Homes Hub, so that local authority planning departments understand what is coming their way and can handle it in the right way, and so that we get the right outcomes. A great deal of work has gone into that, and there is also draft guidance on all of that.

The hon. Gentleman asked in particular about enforcement, which is an important point. Local authorities have a range of existing planning enforcement tools at their disposal, and the Environment Act includes mechanisms to ensure that commitments through conservation covenants are adhered to. The enforcing body that has entered into agreements to secure the site will play the key role in enforcement. That may be the local authority, or it could be a responsible body for a conservation covenant—there are different ways of going about it. Significant on-site biodiversity gains must be secured by a planning condition, planning obligation or conservation covenant, all of which bind the land, which means they apply to successor landowners as well. Off-site biodiversity gains must be secured, including management by either a planning obligation or a conservation covenant. Failure to deliver or attempt to deliver biodiversity net gain outcomes that are secured with the conditions or obligations, subject to which the planning permission is granted, can result in enforcement action by the planning authority. I hope that makes the position clear.

Matthew Pennycook: I thank the Minister for her response. All the processes that she has outlined, from the scrutiny of the initial plan to the monitoring and enforcement, rely on local authorities having the skills and capacity in this very specific and technical area, as she has made clear. Is it the Department's contention that local authorities have the necessary skills and expertise to roll out the framework? If not, what steps is the Department taking to support local authorities in finding and bringing forward those skills and expertise?

Rebecca Pow: Obviously, that is an important issue to which a lot of attention has already been given. For example, I have spoken to my own local authority, which is rather excited about the whole process and has already had a lot of engagement on skills and training. But there will be more, and lessons will continue to be learnt as the whole system is rolled out and gradually reviewed. That is an important point because, for the system to work, local authorities need to know what they are doing. We have draft guidance, we have consulted widely and a lot of engagement is already taking place, but obviously more will be ongoing through both Departments.

Barry Gardiner (Brent North) (Lab): I appreciate the way in which the Minister is trying to set out the process, but there is a real concern among local authorities, only a third of which have a competent ecological officer who can do this enforcement. The Minister knows the figures on the loss of ecological expertise. Also, where the off-site gain has not been made within the area of the local authority, who is going to enforce that?

Rebecca Pow: I thank the hon. Gentleman for that, but I reiterate what I have already said. I am aware of the position of ecologists, but that is why a lot of effort has already gone into engaging with local authorities—that work will continue—and why we have draft guidance, which was worked up in combination with local authorities, developers and all those involved. Obviously, we need to make sure that it works, and that will be watched as time goes on, but it is an essential part of this.

The regulations have been coming for some time. The Environment Act was passed in 2021; Natural England has been working on its metrics since 2012, with a whole range of pilots and so on. I hope that gives Members some assurance, but I am happy to write to the shadow Minister, the hon. Member for Greenwich and Woolwich, if he requires more detail.

The Government initially committed £15 million to work with local authorities on their preparations for biodiversity net gain—[*Interruption.*] A musical interlude! I can only reiterate that the Department for Environment, Food and Rural Affairs has been working hard with our local authorities to ensure that they are ready when the regulations come in. Many local authorities are already delivering biodiversity net gain through the national planning policy framework. There are lots of really good examples—I am sure the hon. Member for Brent North has some in his constituency. This work is building on that. We are aware of the training and skills issue, and we are working on it with local authorities. As I say, a huge amount of evidence-gathering has gone on, and we are working to ensure that the system, including that guidance, is fit for purpose.

We also funded a planning advisory service to support local authority planners to prepare for the mandatory biodiversity net gain, and there are actually more than 600 members in the practitioners network. I hope that gives Members some assurance. This is not being taken lightly at all. Off-site is the same as on-site: local planning authorities will still be responsible for enforcing off-site, where there are biodiversity projects going on elsewhere, if they cannot take place on the development. I will leave that particular answer there; I hope that provides the hon. Member for Brent North with some reassurance.

I will conclude my winding-up speech. I am grateful for hon. Members' input. It is a whole new world—it is, as I say, an exciting one. The regulations we are debating today will support the new mandatory net gain requirement, which will help to secure positive outcomes for biodiversity, create better places for our communities and support a more streamlined, consistent and transparent approach to our planning process.

Once the regulations are approved by both Houses, we will lay the rest of the biodiversity net gain regulations, which we have published in draft, before the House. Those regulations will cover the detail of what developers will be required to submit—there will be a lot more in those regulations to cover some of these questions—as part of the biodiversity gain plan through the planning process, as well as the list of what are considered irreplaceable habitats for the purposes of biodiversity net gain and the list of development types exempt from biodiversity net gain, which will ensure that the policy is proportionate. Those regulations will also provide detail

on what landowners will need to submit to get on the biodiversity net gain register. We will also lay before the House the commencement SI, which will confirm the legal go-live date for biodiversity net gain.

On that note, I thank Members on both sides for their input, as well as my officials. I commend the draft regulations to the Committee.

Question put and agreed to.

**DRAFT BIODIVERSITY GAIN SITE REGISTER
(FINANCIAL PENALTIES AND FEES)
REGULATIONS 2024**

Resolved,

That the Committee has considered the draft Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024.
—(Rebecca Pow.)

6.24 pm

Committee rose.

