



Report to Planning Committee 15 February 2024

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Report Summary	
Report Title	Biodiversity Net Gain, Ancient Woodlands and Levelling-up and Regeneration Act 2023
Purpose of Report	To brief Members on new statutory instruments and commencement of parts of the Levelling-up and Regeneration Act
Recommendations	To note the report and be aware of the contents of the documents when considering planning applications

1.0 **Background**

1.1 The Government, has issued on 17th January five statutory instruments with a further one on 18th January relating to Biodiversity Net Gain:

- [The Biodiversity Gain Site Register Regulations 2024 \(legislation.gov.uk\)](#) (SI 2024 No. 45)
- [The Biodiversity Gain Site Register \(Financial Penalties and Fees\) Regulations 2024 \(legislation.gov.uk\)](#) (SI 2024 No. 46)
- [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024 \(legislation.gov.uk\)](#) (SI 2024 No. 47)
- [The Biodiversity Gain Requirements \(Irreplaceable Habitat\) Regulations 2024 \(legislation.gov.uk\)](#) (SI 2024 No. 48)
- [The Biodiversity Gain \(Town and Country Planning\) \(Consequential Amendments\) Regulations 2024 \(legislation.gov.uk\)](#) (SI 2024 No. 49)
- [The Biodiversity Gain \(Town and Country Planning\) \(Modifications and Amendments\) \(England\) Regulations 2024 \(legislation.gov.uk\)](#) (SI 2024 No. 50)

1.2 Additionally, a further statutory instrument was published on 25th January. This is [The Levelling-up and Regeneration Act 2023 \(Commencement No. 2 and Transitional Provisions\) Regulations 2024](#) as well as a Consultation Direction [The Town and Country Planning \(Consultation\) \(England\) Direction 2024](#).

2.0 Detail

Biodiversity Net Gain

- 2.1 There are a number of statutory instruments relating to biodiversity net gain. This is quite a complex area and therefore a highlighted summary is provided below. Members will be aware a report has been presented to Cabinet in January relating to biodiversity net gain.
- 2.2 From the 12th February, all applications submitted after this date falling within the major category and subject to not falling with any of the exceptions will need to provide a minimum of 10% biodiversity net gain. All other developments will require to deliver 10% net gain from 2nd April 2024, again this relates to those applications submitted after this date and not falling within any of the exceptions. The exceptions include householder development, self-build and custom build applications and developments that are considered 'de minimus' (subject to not being an onsite priority habitat) i.e:
“(a) less than 25 square metres of onsite habitat that has biodiversity value(b) greater than zero; and
(b) less than 5 metres in length of onsite linear habitat.”
- 2.3 SI 2024 No. 46 makes provision in relation to the requirement for a biodiversity net gain register which is maintained by Natural England. Landowners looking to register their land for biodiversity net gain on a commercial basis (i.e. to sell biodiversity units to developers) are required to provide information to Natural England which if they provide false or misleading information, can be subject to a financial penalty.
- 2.4 Statutory Instrument 2024 No. 49 provides clarification in relation to Section 73 of the Town and Country Planning Act 1990 relating to removal or variation of planning conditions on an earlier permission? When amendments would affect the previously approved onsite biodiversity net gain and a biodiversity plan has been approved, the earlier approved plan will no longer be regarded as approved.
- 2.5 SI 2024 No. 50 sets out the information that needs to be submitted with a planning application in order for it to be valid. This includes the requirement for the applicant to provide a statement as to whether the planning permission, if granted, would be subject to the biodiversity net gain condition or not. Applicants are required, if net gain will be a condition, to submit a completed biometric calculator of the biodiversity value of the site at the date of application or an earlier date (latter subject to criteria), description of any irreplaceable habitat and plan showing the location of the habitat. The Instrument sets out the condition(s) to be applied to applicable planning permissions.
- 2.6 This, as noted above, is a very highlighted summary with further information to be provided to Members over the coming months, as well as relevant information provided on our website.

The Town and Country Planning (Consultation) (England) Direction 2024

- 2.7 This 2024 Direction replaces the Direction issued in 2021 (The Town and Country Planning (Consultation) (England) Direction). The replacement now includes the requirement to consult with the Secretary of State before granting planning permission that affects ancient woodland.

- 2.8 The Direction includes a definition of ‘ancient woodland’ as meaning “*an area in England which has been continuously wooded since at least the end of the year 1600 A.D*”. Clarification is also provided regarding the definition of ‘affected’ as meaning “*development which would result in the loss or deterioration of ancient woodland, where the local planning authority considers the potential adverse impacts cannot be mitigated.*”
- 2.9 Additionally, definitions relating to ‘playing fields’ and ‘playing field developments’ have also been updated. Members will be aware in relation to this Direction that the Council has referred applications relating to Green Belt developments over recent years. All referrals have been determined as falling to the Council, as Local Planning Authority, to determine.

Levelling-up and Regeneration Act 2024 Commencement and Transition

- 2.10 Section 94 of the Act inserts a new section 38ZA into the Planning and Compulsory Purchase Act 2004 to provide a statutory basis for national development management (DM) policies. Members may be aware that the Government is looking to introduce national DM policies that will apply to the country, thereby mitigating the need for each local planning authority to adopt their own. These are expected to be aimed towards aspects that are applicable (predominantly) throughout the country e.g. heritage, climate change, green belt etc. Local matters such as site allocations will still be for the Council to identify.
- 2.11 A report was recently presented regarding the Government consultation on Street Development Orders. Regulation 2(d), 2(e) and 2(q) are brought into force for the limited purpose of enabling regulations and development orders to be made. Any outcome in relation to the consultation will be presented when it is published.
- 2.12 Many other areas of the Act are being brought into force which can be read via the link at the foot of this report. However, the changes identified are considered to be the principal ones that will likely affect the Council most.

3.0 Implications

- 3.1 In writing this report and in putting forward recommendations officers have considered the following implications; Data Protection, Digital and Cyber Security, Equality and Diversity, Financial, Human Resources, Human Rights, Legal, Safeguarding and Sustainability, and where appropriate they have made reference to these implications and added suitable expert comment where appropriate.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

[The Biodiversity Gain Site Register Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Biodiversity Gain Site Register \(Financial Penalties and Fees\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

[The Biodiversity Gain Requirements \(Irreplaceable Habitat\) Regulations 2024 \(legislation.gov.uk\)](#)

[The Biodiversity Gain \(Town and Country Planning\) \(Consequential Amendments\) Regulations 2024 \(legislation.gov.uk\)](#)

[The Biodiversity Gain \(Town and Country Planning\) \(Modifications and Amendments\) \(England\) Regulations 2024 \(legislation.gov.uk\)](#)

[The Levelling-up and Regeneration Act 2023 \(Commencement No. 2 and Transitional Provisions\) Regulations 2024](#)

[The Town and Country Planning \(Consultation\) \(England\) Direction 2024.](#)