



25 January 2024

Addendum to Bristol Tree Forum representations in relation to the Bristol Local Plan 2023 Publication Version consultation

The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024¹ (the Regulations) take effect on 12 February 2024. Some of the proposed Local Plan policies will need to be redrafted to align with these Regulations. These policies are:

- BG2: Nature conservation and recovery
- BG3: Achieving biodiversity gains
- GL1: Local Green Space
- GL2: Reserved Open Green Space

These four policies, in whole or in part, prohibit development that causes 'harm' or requires it to be avoided or mitigated, but they need to be reconsidered in the light of the new 2024 Regulations, for the reasons set out below.

1. The Regulations will amend Schedule 7A of the Town and Country Planning Act 1990² (TCPA90). Schedule 7A was added when the Environment Act 2021³ (EA21) was enacted. The remaining parts of Part 6 - Nature and Biodiversity of EA21, come into force on 12 February 2024.
2. Part 4 of the Regulations will also amend the Town and Country Planning (Development Management Procedure) (England) Order 2015⁴, by introducing a new Part 7A - 'Biodiversity Gain Plan'. These will also take effect on 12 February 2024.
3. Part 37A of the Regulations gives a revised statutory definition of the biodiversity mitigation hierarchy:

37A. In this Part, "biodiversity gain hierarchy" means the following actions in the following order of priority—

(a) in relation to onsite habitat with a habitat distinctiveness score, applied in the biodiversity metric, equal to or higher than four—

(i) avoiding adverse effects of the development, or

(ii) insofar as those adverse effects cannot be avoided, mitigating those effects;

(b) in relation to any onsite habitat which is adversely affected by the development, compensating for that adverse effect by—

(i) habitat enhancement of onsite habitat;

¹ <https://www.legislation.gov.uk/uksi/2024/50/made#f00002>

² <https://www.legislation.gov.uk/ukpga/1990/8/schedule/7A>

³ <https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/2022-03-07>

⁴ <https://www.legislation.gov.uk/uksi/2015/595/contents/made>

- (ii) *insofar as there cannot be that enhancement, creation of onsite habitat;*
 - (iii) *insofar as there cannot be that creation, the availability of registered offsite biodiversity gain for allocation to the development;*
 - (iv) *insofar as registered offsite biodiversity gain cannot be allocated to the development, the purchase of biodiversity credits.*
4. Regulation 37A uses the terms ‘*adverse effects*’ and ‘*adversely affected*’ to identify when the biodiversity mitigation hierarchy will be engaged. The proposed terms ‘*significantly harmful impact*’ (BG2) and ‘*harmful impact*’ (GI1 and GI2) are not only at odds with each other, as we discussed in paragraphs 73 to 75 of section E of our original representations, but they may also be interpreted as not meaning the same as the terms ‘*adverse effects*’ and ‘*adversely affected*’, which are used in Regulation 37A.
 5. It is also hard to imagine any circumstance where development proposals which engage proposed policies BG2, BG3, GI1 and GI2 will not also engage considerations of biodiversity gain, as defined in EA21, TCPA90 and these Regulations. In light of this, it is clear that the proposed wording of these policies (and of any others which need to consider biodiversity gain) needs to be aligned with the Regulations.
 6. We also note that paragraph 180 a) of the National Planning Policy Framework⁵ (NPPF), which relates to habitats and biodiversity, contains another mitigation-hierarchy-like definition:

‘if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.’

However, because EA21 and TCPA90, and the regulations made under them, place biodiversity gain on a statutory footing, it will no longer be possible to rely on the NPPF definition of the mitigation hierarchy when assessing impacts on habitat biodiversity when the Regulations take effect.
 7. The new definition of the biodiversity mitigation hierarchy, at paragraph 3 above, must also replace the draft planning practice guidance annexed to our original representations as this has now been superseded. Our earlier representations on the impact of this remain as stated.

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<https://webarchive.nationalarchives.gov.uk/ukgwa/20230929144819/https://www.gov.uk/government/publications/national-planning-policy-framework--2> - the September 2023 version.