

Draft Consultation Responses on Biodiversity Net Gain Regulations and Implementation

These responses need to be read alongside the consultation document.

https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-biodiversity-net-gain-regulations/supporting_documents/Consultation%20on%20Biodiversity%20Net%20Gain%20Regulations%20and%20Implementation_January2022.pdf

Question 1

Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

a) for area-based habitat: [Yes (which of the following thresholds do you think is most appropriate: 2m², 5m², 10m², 20m², 50m², other threshold – please specify)

b) for linear habitat (hedgerows, lines of trees, and watercourses): [Yes (which of the following thresholds you think is most appropriate: 2m, 5m, 10m, 20m, 50m, other threshold – please specify)

Yes, but only when it is truly de minimis so therefore the smallest thresholds that have been suggested would be appropriate, 2m² for habitat and 2m of linear habitat of habitat that is of low or medium distinctiveness.

Question 2

Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?

Yes, we agree that this is a pragmatic approach, whilst some household development will be able to make some provision for net gain, to achieve 10% is very unlikely and therefore would have an impact on people making extensions to their property. The wording of the exemption needs to be done carefully to allow a local authority, where the evidence exists, to include policies that will necessitate some gain within an appropriate householder application, such as a bee, bat or swift bricks for instance.

Question 3

Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?

This is more complicated, depending on the scale of change of use and also what will occur on the site. It is arguable that some changes would have an impact on biodiversity and would be able to provide gains on, or off site. It is considered that changes of use of buildings could be exempt if it is solely the building that is subject to the change. If however the change of use relates to land then there are likely to be BNG implications.

Question 4

Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?

Yes, where the entirety of the development site is for biodiversity net gain.

Question 5

Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?

No, self and custom build developments should still be required to provide 10% net gain, as they have the same impact as all other types of dwelling. This can be achieved on or off site, but the impact that they have still needs to be mitigated. Some areas for self and custom build can be extensive and shouldn't be treated any different to any other development.

Question 6

Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?

Yes, brownfield sites should be required to meet the minimum 10% net gain, or local adopted policy.

Question 7

Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?

Yes, temporary applications should be required to meet the requirements.

Question 8

Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?

Yes,

Question 9

Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?

No

Question 10

Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity gain requirement?

Yes. If it is for a visitor centre, then the impact on the biodiversity could be great and therefore should be mitigated. It is considered that other nature conservation bodies will own and be managing the site and therefore it is likely that any impact would be mitigated without provision in an Act. However there may be cases where this isn't so and therefore a requirement set out in legislation will ensure that these designated sites are treated in the same way and the valuable habitat that is found in these sites is protected and further enhanced if development of whatever scale is due to take place.

Question 11

Do you agree with the stated proposals for development (or component parts of a development) on irreplaceable habitats, specifically:

- a) *The exclusion of such development from the quantitative mandatory biodiversity gain objective?*

Yes, providing the wording of the secondary legislation around irreplaceable habitats is strong enough and set out by Natural England and specialist advisors.

- b) *The inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency?*

Yes, essential to understand the site.

- c) *Where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat?*

Yes

- d) *To use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation?*

Yes

- e) *The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?*

Yes, essential.

Question 12

Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?

Yes – however we would like to see that large sites can be reviewed if they secure permission before November 2023. Some sites may try to secure a permission before this date to bypass the 10% gain requirement on subsequent reserved matters. On large sites this will be a significant lost opportunity that could be resolved through a review of large scale permissions at an appropriate time.

There needs to be certainty that reserved matters applications do not try to deviate or lessen their provision. This is especially so on very large sites where different housebuilders may deliver different phases. The local authority will need to have sufficient legislation to ensure that any amendments are the most appropriate whilst meeting the requirements.

Question 13

Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?

Wording around frontloading will need to be enforceable and if not achievable on site at the beginning of the development consideration of an offsite to mitigate at the early stages of development in addition to that planned for the rest of the site.

Yes, it is agreed that if there are any changes then a new biodiversity plan will need to be approved before development continues.

In relation to minerals permissions, Reviews of Old Minerals Permissions (ROMPS) should not be excluded as they are a good opportunity to achieve gains and to exclude biodiversity net gain from modern conditions would not appear to make sense in the context of the other regulations proposed.

Question 14

Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?

A small sites metric that meets the requirements of small sites and helps these developments through the process would be beneficial. The metric should be proportionate to the scale of development proposed and enable these developments to be suitably assessed without unnecessary cost burdens or undue delay. There are however some concerns that the initial small sites metric does not appear to include any offsite provision. It is likely that small sites will need to have an element of offsetting required. Small sites by their nature are intensely developed and therefore leave little space for onsite BNG. It is considered that these sites will predominantly need to have an element of offsite provision required in their plan. Some examples of the small site metric used against real examples would be helpful to understand the usefulness of the small sites metric.

Question 15

Do you think a slightly extended transition period for small sites beyond the general 2- year period would be appropriate and helpful?

No, a two year period is sufficient for all scale of development to be aware and consider the requirements of the Act.

Question 16

Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?

The LPA, if provided with the right resources, may be able to further support small sites to meet their obligations. The provision of case studies would be useful on how small sites can meet the gains required.

Please note that questions 17 to 27 relate to Nationally Significant Infrastructure Projects and NNC would not be the determining authority in these cases. NSIP applications could still be determined within the NNC area, but it is not considered necessary to respond to these questions separately.

Part 3: How the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 development

Question 28

a) Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan?

Yes, the contents of the information and plan are necessary to undertake an accurate assessment of the development proposals and to ensure that the development is providing the required level of information to allow consideration by the local authority.

b) Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?

The submission and approval process is appropriate. Standardised templates will be helpful. There will however be a challenge for many local authorities who will simply not have the necessary skills and resources to assess the plans that have been submitted in any meaningful way. Extra burdens and transition funding will be necessary to upskill and support local authorities and this must be sufficient to fully address the additional requirements. The outcomes desired from the Act will only come to fruition if local authorities are enabled to fully and meaningfully comply with the requirements.

Question 29

We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?

Yes. This seems appropriate. A worked example would be useful to see.

Question 30

Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?

Some worked examples would be good to show the different options available to each development. There will be uncertainty on the most appropriate off site gains at the introduction of the legislation, so further guidance would be appreciated in order to secure the best outcomes in different scenarios. Or a flow chart to demonstrate the best way to be considering the appropriateness of off site gains.

Further detail about what constitutes an appropriate conservation covenant is needed and examples of wording for S106 agreements would be helpful.

Guidance would be helpful to explain how local authorities could best target local habitat gain priorities through Local Nature Recovery Strategies, Green Infrastructure Plans or local plan allocations/policies.

Question 31

How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

Include it in the legislation.

Question 32

Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?

The proposals seem fair, it must be ensured that all those involved are held accountable and fully understand the implications of supplying the units and maintaining these for the required length of time. Suppliers should be fully aware of taking on the risk that it may cost more due to other interventions and will then be required to accept the burden and ensure the habitat provision is not diminished in anyway.

Question 33

Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?

Yes, this seems a fair approach. It is imperative that additionality is demonstrated and that the basic policy requirements are achieved and delivered before any biodiversity units can be used for other sites off set credits.

Question 34

Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above?

The off site gains register will need to be easy to access for all and also able to be updated and added to easily to ensure it is up to date and fit for purpose. It is considered that a central maintained database is the only way that this can happen.

Support should be provided to local authorities to help them to identify a pipeline of suitable projects to enable the sale of biodiversity units. This is particularly likely to assist very small sites in identifying suitable offsetting opportunities locally. It will also provide an important opportunity for funding to support enhancement of publicly owned sites. Advice on identifying the full cost of management for pricing of biodiversity units would be beneficial. This should expand on all the costs which can be included in calculating the price of management for 30 years including staffing and equipment costs.

Question 35

Are the proposals outlined here sufficient to enable and encourage habitat banking?

Yes

Question 36

Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?

Yes

Question 37

Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

It would seem appropriate that biodiversity units can be retained for an indefinite period, so no time limit applied and is down to the landowner's discretion should they want to consider alternatives if they are not allocated. However, this would apply to a whole site as it would be much more difficult to subdivide sites that may have been partially allocated with the biodiversity interdependencies that may be on site. At the very least a review of the

biodiversity and deliverability would need to be undertaken periodically to account for any changes on site.

Question 38

Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?

Yes

Question 39

Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

Yes, there could be the option of a fast track approach at an extra fee to be determined by the assessor.

Question 40

Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?

Yes, it will need to be completed in full to allow it to be registered.

Question 41

Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?

Yes

Question 42

Do you agree that the UK Government should allow the register operator to: a) set a fee for registration in line with the principle of cost recovery? b) impose financial penalties for provision of false or misleading information?

Yes

Question 43

Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?

Yes

Question 44

Do you agree with our proposals for additionality with respect to:

a) *measures delivered within development sites?*

Yes, it will need to be clear on how aspects are measured in the metric, it is acknowledged that all parts of a new development need to deliver and therefore multifunctionality of all aspects is considered best practice, as long as they are meeting the requirements.

b) *protected species and off-site impacts to protected sites?*

Yes, it is important with these aspects of additionality that there is a clear rationale for it.

c) *on-site impacts on protected sites, and any associated mitigation and compensation?*

yes

d) *achievement of River Basin Management Plan Objectives?*

Yes

e) *the strengthened NERC Act duty on public authorities?*

Yes that NERC authorities may generate and sell biodiversity units.

Question 45

Do you think that A) the non-designated features or areas of statutory protected sites and/or

B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?

Yes, both.

Question 46

Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?

No answer to this question as not relevant to NNC.

Question 47

Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?

Yes, this seems like a sensible approach to start to secure delivery on the ground in a competing market for land and the policy driver in this instance to create more land for biodiversity. It also aligns with the fact that land management can create multifunctional benefits and that these may require more enhanced management and therefore cost that should be recognised by combining payments. Monitoring of land that has used a

combination of payments will need to take place to ensure that there are no impacts on the desired outcomes and that the outcomes do provide actual additionality. It is considered that the cost of monitoring of these sites will need to be factored in on a full cost recovery model, which may mean that these sites are then too costly to deliver. There needs to be a balanced approach between multifunctional benefits and the ability to monitor these.

Question 48

Are these proposals for statutory biodiversity credits sufficient to:

a) *Ensure, when supported by suitable guidance, that they are only used by developers as a last resort?*

Yes

b) *Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?*

Yes

Question 49

Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?

No. The price needs to be set that it is considered a last resort, however for areas where there are no local offsets and no mechanisms then the fee needs to reflect any viability concerns for bringing forward development. Could the fee be on an escalated approach, and extra costs added where there are local schemes available. It shouldn't be a barrier to development.

[Yes (please explain the alternatives and your reasoning) / No (please explain why not) / Other (please tell us more) / Do not know]

Question 50

Do the principles for how we will set, and review credit price cover the relevant considerations?

We don't consider it clear enough for the transition period that will ensure it is a last resort measure, whilst still allowing development in areas where there are no local schemes in place to be able to progress with development.

Question 51

Do you agree with the proposed principles for credit investment?

Yes

Question 52

Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?

The requirements seem reasonable, in particular the proposal that it is the landowners or developers responsibility to ensure that project monitoring and reporting obligations are fulfilled. However, in respect of a local authority setting up systems across the council to understand and adhere to the requirements will be burdensome in the first few years until processes are set up. The requirements for enforcement where there is a failure to deliver outcomes secured may also prove challenging, both in terms of resources and expertise. It is considered that the extra burdens grant will need to be sufficient to support the suitable set up of processes and systems across the council as well as expanding ecological support and upskilling staff. Councils will need to have an early understanding of the level of funding the government intends to make available and when this will be provided to enable them to plan resources effectively.

A way to ease monitoring requirements would be to have this as a digital and GIS record held at a central resource, the local biodiversity records centre for example, although funding would be required to support the establishment of this.

Question 53

Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?

By earned recognition it is assumed that an organisation has passed a set of stringent tests and can demonstrate that they are competent and accountable for the provision of biodiversity, and therefore enforcement and scrutiny can be focused on those that do not have any recognition. This could be a sensible way forward, as long as there are regular checks on those sites where earned recognition organisations have been involved. There needs to be more clarity on this area.

Question 54

Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?

Yes, they seem sufficient to monitor the success or otherwise of the Environment Act requirements. However, there will be extra burdens placed on local authorities to meet the proposals set out in the consultation. It is considered that extra burden payments will ensure that these aspects can be achieved at a local authority. This will need to be front loaded to ensure that the local authorities are ready to start recording at the implementation stage of the Act requirements.

Question 55

Considering the data requirements set out above and in greater detail in Annex C:

- a) *is there any additional data that you think should be included in the Biodiversity Reports?*

No, this appears to set out the data needed for a local authority to monitor biodiversity within their area.

- b) *is there any data included here that should not be required as part of the Biodiversity Reports?*

No