

# Biodiversity Net Gain Regulations and Implementation

Consultation response from the Landscape Institute

For: Department for Environment, Food and Rural Affairs (Defra)

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## 1 Who we are

The Landscape Institute (LI) is the royal chartered body for the landscape profession. We represent over 5500 landscape architects, landscape planners, urban designers, and landscape and parks managers.

As a professional organisation and educational charity, we provide training, accreditation, technical advice, and standards to maintain the high quality of the landscape profession across the UK. We protect and enhance the built and natural environment for the public benefit.

This consultation response has been informed by input from our Biodiversity Net Gain Advisory Group and our wider membership.

## 2 Summary

Biodiversity Net Gain (BNG) offers the potential to make a profound contribution to reversing the nature crisis. If done right, it can also contribute towards adapting to climate change, as well as delivering a range of other ecosystem services which benefit people and the planet.

We strongly welcome the Government's ambition in this area. The principles of biodiversity net gain which are set out in the Environment Act, and now in many local plans across the country, are profound – and should provide the framework for making all development greener.

The Landscape Institute is committed to providing standards, training, and guidance to its professional members to ensure that BNG can be embedded in their work following the transition period. To this end, [we have recently published a guidance document](#), and will shortly be launching an accredited CPD course coproduced with CIEEM. Landscape professionals are essential to achieving green development which works for people, place, and nature.

The detailed proposals set out in this consultation document are – for the most part – well-constructed. We particularly welcome the proposals not to exclude brownfield land, temporary permissions, and development which would be permitted development but falls within designated landscapes.

We do not support the blanket exemptions for change of use and householder applications – however would support a proportionate approach to applying BNG to these.

We strongly welcome the ambition to apply biodiversity net gain to Nationally Significant Infrastructure Projects. The detailed proposals are broadly welcome, however we believe more policy development is required which disaggregates between the very diverse types of NSIPs.

We remain concerned about the issue of skills gaps – both in the private and public sector, but especially in the latter. We believe this remains the biggest risk factor to the successful delivery of BNG. Environmental professionals are not equally distributed across the country, and skills gaps are more likely to exist in local authorities with higher figures of deprivation. There are, for the most part, no statutory obligations for local planning authorities to employ appropriate environmental professionals.

We support the inclusion of language around “competent persons”, however we would like to see this clarified to ensure it refers only to those professionals who have demonstrated their competence through membership of an appropriate professional body.

### 3 Full consultation response

#### Part 1: defining the scope of the biodiversity net gain requirement for Town and Country Planning Act 1990 development

##### Exemptions

Developments impacting habitat below a minimum size 'de minimis' threshold for biodiversity net gain

##### 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: 2m<sup>2</sup>, 5m<sup>2</sup>, 10m<sup>2</sup>, 20m<sup>2</sup>, 50m<sup>2</sup>, other threshold – please specify) / No (please explain why not) / Do not know]

We agree a de minimis threshold is reasonable, in order not to be too burdensome on small developments in habitats of lower distinctiveness. We agree priority habitat should not be included within this exemption.

The disapplication of BNG would not imply that broader considerations of natural capital gain and good landscape design would not apply. In an urban context, even small amounts of green space can have enormous benefits.

For BNG exemption purposes, we recommend a threshold of 10m<sup>2</sup> would be most appropriate. The small sites metric will support the application of BNG at this level.

A threshold of 5m<sup>2</sup> or less would bring a range of planning applications for very small-scale landscape/public realm works (such as street furniture) into play, which would be disproportionate and have limited biodiversity benefits, particularly in an urban context.

2m<sup>2</sup> may also be an unworkably small area to robustly apply BNG in either case, given the limitations of aerial imagery to record the pre-development site condition, and margins of error / fuzziness in boundary lines on maps.

Conversely a threshold of 50m<sup>2</sup> would exclude habitats of reasonable scale, where biodiversity gain should apply. The small sites metric will support the application of BNG at this level.

It will be important to stop developers artificially dividing sites to meet de minimis thresholds. Given that planning fees would normally be applied at each application, we think this is unlikely in practice – however it will be important to monitor.

As part of the monitoring of BNG, the number of applications for which the de minimis exemption has been applied should be recorded – to understand nationwide trends. The threshold should be formally reviewed over time.

##### **b) for linear habitat (hedgerows, lines of trees, and watercourses):**

[Yes for hedgerows and lines of trees) (which of the following thresholds you think is most appropriate: 2m, 5m, 10m, 20m, 50m, other threshold – please specify) / No for watercourses (please explain why not) / Do not know]

A de minimis threshold may be appropriate with regards to linear hedgerows and lines of trees, in lower distinctiveness habitats. However we believe this should be set at a minimum level, if at all, given that by their nature, linear habitats are dependent upon their connectivity. We do not believe that more than 5m would be appropriate.

We note that the normal regulations concerning hedgerows (i.e. the 1997 Hedgerow Regulations) and trees (i.e. Tree Protection Orders, etc.) would continue to apply. It would be relatively uncommon for a small stretch of trees or hedgerows to be the sole subject of a planning application, in a way that would not already be covered by these regulations, or otherwise covered by virtue of being part of an application for a broader area-based habitat (as in Q1). For this reason, a linear exemption may add regulatory complexity without reducing a major burden for development.

For the same reason, we are not convinced that there should be a de minimis threshold for watercourse habitats. Unlike trees and hedgerows, they are also not limited by their width.

## Householder applications

### Question 2

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

The loss of vegetated private garden space has a large cumulative effect on nationwide biodiversity. This is recognised by the Defra metric.

A majority of residential home improvements would not necessitate a householder application, as they would be covered by permitted development. Where a householder application is required, many would be of a scale or type that would otherwise be excluded from BNG, i.e. by virtue of their size (less than 10m<sup>2</sup> as per Q1) or type (e.g. because the baseline biodiversity score will be zero).

In the cases where BNG would apply to householders, we believe it would not be appropriate to exclude them on that basis alone.

It may be appropriate to apply a different de minimis area threshold for householder applications.

We accept that for householder applications on-site mitigation may be unviable in the vast majority of cases, to the nature of these types of applications (e.g. because of existing space limitations) and the proportionality of conservation covenants.

Similarly, the use of a professional ecologist in householder projects is not likely to be common. Householder projects where BNG would apply are likely to require a range of professional input and approvals, including independent drainage surveys, party wall surveys, structural surveys, and the need to meet the relevant range of buildings regs. If the project entails landscape works, a

professional landscape architect may already be involved in the project – and, if chartered, they will be able to provide some appropriate assessment and design of on-site biodiversity enhancements.

We also note that the vast majority of any negative biodiversity impacts related to private gardens is due to activities that are not currently monitored or even measurable (for instance the use of artificial landscaping materials), let alone attract a planning application.

## Change of use applications

### Question 3

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

[Yes / No (please explain why not) / **Other (please tell us more)** / Do not know]

Change of use applications may be appropriate for exemption, but not as a blanket exception. We believe a bespoke area threshold would be appropriate for COU applications.

Change of use applications can apply to comparably large sites, for example change from agricultural to equestrian use, or changes to urban public realm. In some of these cases, the biodiversity impact can be significant (particularly those related to agricultural use) in a way that will not later attract planning scrutiny (for instance the removal of grassland for artificial surfaces). Some of these applications should therefore attract biodiversity net gain.

It may be appropriate to set a higher area threshold for change of use applications, but we do not believe it would be appropriate to exclude them in entirety.

## Creation of biodiversity gain sites

### Question 4

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

[Yes, only for biodiversity net gain (please explain why) / Yes, also for some other environmental mitigation purposes (please explain why) / No (please explain why not) / **Other (please tell us more)** / Do not know]

We agree it would not be reasonable to apply BNG to developments which are undertaken exclusively for mandatory biodiversity gains. Doing so would limit the amount of biodiversity created through this policy.

In terms of other applications solely for environmental mitigation purposes (including landscape mitigation), we believe there could be a case for the inclusion of these. We would not want to see creation of 'perverse incentives'/unforeseen consequences whereby environmental enhancement schemes are re-configured to meet BNG obligations in a way that is done solely for cost savings, and lessens the intended mitigation.

However we acknowledge that this would necessitate more clarity than currently exists, to avoid creating a potentially open-ended exemption. We would be pleased to work with Defra on developing this.

In practical reality, we would hope that the vast majority of other applications for environmental mitigation would be able to easily apply the 10% biodiversity uplift as part of the original plans.

## Self-builds and custom housebuilding

### Question 5

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

[Yes (please explain why) / **No** (please explain why not) / Other (please tell us more) / Do not know]

We do not believe self-build and custom housebuilding should be exempt.

We are not aware of any additional difficulties which would be experienced by self-build/custom in applying BNG which are not directly comparable to other planning or building obligations (i.e. the need to understand and apply standards, etc.).

We agree many such developments will already be higher-standard or otherwise more innovative than other development, but that exempting these developments from the obligation to deliver 10% biodiversity is not justified.

It is not uncommon practice for a large residential scheme (particularly those on greenfield which are otherwise less constrained) to give-over a portion of plots to self-build/custom housebuilding. We believe if self-build/custom housebuilding were exempt from BNG, this practice would be gamed in a way that would be detrimental to biodiversity outcomes.

## Brownfield sites

### Question 6

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

[**Yes** / No (please explain why not) / Other (please tell us more) / Do not know]

We agree, for the reasons given by in the consultation document. Brownfield sites can be of high biodiversity value and potential.

## Temporary permissions

### Question 7

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

[**Yes** / No (please explain why not) / Other (please tell us more) / Do not know]

We agree, for the reasons given in the consultation document.

Developments for which permitted development rights are not applicable due to their location in conservation areas, areas of outstanding natural beauty or national parks

#### 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 / No (please explain why not) / Other (please tell us more) / Do not know]

We agree, for the reasons given in the consultation document.

Any exemption would undermine the fundamental purpose of requiring planning permission for such developments. The physical form and natural function of these areas can be significantly threatened by development which would be appropriate for PD rights elsewhere.

Any small scale development would already be captured by the area-based threshold, and there is no need for additional exemptions.

#### General question on exemptions

#### 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?**

[Yes, exempt (please explain which development types and why they should be exempt) / Yes, a modified requirement (please explain which development types and why they should face a modified requirement) / No / Other (please tell us more) / Do not know]

We are not aware of any other development types which would be appropriate for exemptions.

A separate point: it is important to be clear that multiple exemptions may apply to a site. In these instances, it would be useful to capture all relevant exemptions for monitoring purposes.

#### Development within statutory designated sites for nature conservation

#### Question 10

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

We agree. Biodiversity net gain is separate and additional to existing legal and policy requirements. It would not be appropriate to exempt these sites from biodiversity net gain.

## Irreplaceable habitat

### 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 / No (please explain why not) / Do not know]

We agree that it would be appropriate for such development to be resolved outside of the 10% threshold for biodiversity net gain, which would not be appropriate to mitigate the loss of irreplaceable habitat. A bespoke compensation, alongside the existing legal and policy protections for these sites, may be the most appropriate approach – on the assumption that local planning authorities (and other relevant statutory consultees such as Natural England) feel equipped to undertake those bespoke calculations on a case-by-case basis.

**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 / No (please explain why not) / Do not know]

Yes, for all the reasons that a biodiversity gain plan is valuable for any other kind of development; including to allow appropriate scrutiny and public record.

**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 / No (please explain why not) / Do not know]

If irreplaceable habitats are within the red line boundary but not negatively impacted by the development, we agree it would be appropriate to seek a related net gain for these habitats. This would be more straightforward, as access to- and knowledge of- those areas will be already established through the site design and habitat assessment.

**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 / No (please explain why not) / Do not know]

A clear definition is vital: both of the types of irreplaceable habitats (i.e. a list) and the underpinning criteria/values which makes them irreplaceable.

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

[Yes / No (please explain why not) / Do not know]



Yes, as above.

## Part 2: Applying the biodiversity gain objective to different types of development

Phased development and development subject to subsequent applications

### 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 / No (please explain why not) / Do not know]

We agree; this is the only way to ensure on-site gains in practice.

The reality of development at reserved matters stage can be very different to the original described intention at outline stage. Outline stage will often overpromise a greener development in landscape terms – particularly in promotional materials – than actually materialises once landscape elements are designed, planned, and costed at reserve stage.

The biodiversity gains should be described as early as possible. We agree with the list of items proposed for inclusion in a BNG strategy. However, Defra should be clear that the “key principles that will be followed to ensure BNG” should be location-specific rather than generic principles. For instance, if the development abuts a strategically-important watercourse – the principles should set out the intention to enhance it at the outline stage (i.e. rather than just include generic comments about the importance of habitat connectivity).

Biodiversity scrutiny applied at the reserved matters stage is essential, as this is when landscape design would be scrutinised – along with relevant matters including access and layout.

### Question 13

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

[Yes / No (please suggest alternative approaches) / Do not know]

We broadly agree.

However, there are risks with the application of this method to a variation application. Although the biodiversity gain of the varied element may be inconsequential, the change can affect the wider biodiversity value of the whole site (for instance if it affects access, connectivity, waterflow, etc.). Deeper scrutiny of the impact of the variation on the original scheme should be required – not simply a ‘blinker’ review of the varied element.

Minerals sites hold high potential for biodiversity gain, given that land restoration is already a well-established phase in the overall process. Additional guidance will be needed for this type of application.

### Small sites

#### 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?**

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

In principle yes, we agree a small sites metric could reduce time and cost burdens for small sites – in a way that takes a proportionate approach to achieving biodiversity gain. We are not here commenting on the substance of the current small site 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?**

[Yes, a 12-month extension (please explain why) / Yes, a 6-month extension (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

We do not consider an extended transition period to be necessary. There is nothing inherently more complex in applying BNG to a small site than a larger one (in fact the opposite).

We acknowledge however that the small sites metric is a developing tool, and we would welcome additional guidance and support in helping the sector apply it.

#### 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?**

[Yes (please outline your suggestion and explain how it would help) / No / Do not know]

Not an additional process simplification, however resources must continue to be made available to support the sector to upskill in this area, in terms of guidance and training. Without competent well-informed professionals to apply biodiversity net gain on-the-ground, the policy will not succeed.

We would be keen to comment on the professional competency requirements for undertaking a small sites metric. As with every part of BNG, professional competence is core to ensuring that the policy is a success.

### Nationally Significant Infrastructure Projects

#### Scope, percentage, and targeted exemptions

#### Question 17

**Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?**

[Yes, exemption (please define your proposed exemption) / Yes, percentage reduction (please define your proposed reduction) / Yes, other modified requirement (please define your proposed modified requirement) / **No** / Do not know]

We not aware of any reason why targeted exemptions would be necessary for NSIPs.

NSIPs cover a very diverse range of development types, and the process and nature of applications for waste sites is very different to that of ports, for instance. Linear infrastructure (road and rail) will have the potential for both significant biodiversity impact and gain. Some NSIPs have comparatively low ground coverage (for instance electricity pylons) where the biodiversity potential can be profound.

For such infrastructure, a biodiversity net gain of far more than 10% may be possible. For instance: whilst the current design guidance for development near high voltage overhead lines does not directly consider biodiversity, by default it would facilitate significant gains – given that the land can remain vegetated and access and other development is extremely limited:

[https://www.nationalgrid.com/sites/default/files/documents/Development%20near%20overhead%20lines\\_0.pdf](https://www.nationalgrid.com/sites/default/files/documents/Development%20near%20overhead%20lines_0.pdf)

To exempt such developments from a 10% gain would be a missed opportunity.

**Setting the requirement and transition arrangements through ‘biodiversity gain statements’**

**Question 18**

**Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?**

[**Yes (please explain why)** / No (please explain why not) / Other (please tell us more) / Do not know]

We broadly agree, however we would urge that this approach comes into effect at the earliest opportunity. Although the consenting process and policy framework is different; the market, professionals and practices working on NSIP schemes will be functionally the same as those working on normal Town and Country Planning Act development. Although some practitioners will specialise in infrastructure, the competencies and knowledge required are not different enough to warrant a substantial delay.

Central government can be setting an example in leading with net gain through NSIPs.

**Question 19**

**Do you consider that November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?**

[Yes (please, provide any supporting evidence or justification) / No, it should be later (please provide any supporting evidence or justification) / **No, it should be sooner (please provide any supporting evidence or justification)** / Do not know]

As above, it is not apparent why NSIPs require a longer transition period than many other developments which can be highly complex in nature and scale. Although some professionals (landscape architects, ecologists, etc.) do specialise in infrastructure, the reality is that those working on both NSIPs/non-NSIPs may be the same people, if not substantively the same in competence and knowledge. The market would be ready long before November 2025.

#### **Question 20**

**Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements?**

[Yes (please explain why) / **No (please explain why not)** / Do not know]

As above, it is not apparent why NSIPs require a longer transition period than other developments.

#### **Question 21**

**Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?**

[Yes (please explain why) / **No (please explain why not)** / Do not know]

Tipping the balance to make delivery on existing landholdings easier introduces greater risk that the delivery of biodiversity net gain will fall outside of the local area to a NSIP, and/or that a site is selected for reasons other than its potential biodiversity benefit.

### **Process and demonstrating biodiversity net gains**

#### **Question 22**

Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs?

[Yes / **No (please explain why not)** / Do not know]

In principle, we agree; this is an important consideration, for the reasons given in the consultation document. There is also arguably a different in-principle reason to favour (or disfavour) on-site BNG for NSIPs, given they are less likely to be sited in places where people live.

However, there is significant variation in types of NSIP application (per our answer to Q17) and types of environmental mitigation - and much greater nuance is required.

Landscape mitigation for instance can be a common requirement for certain types of NSIP developments, and this may need to fall within the development site boundary. However, it is oversimplistic to suggest that this would necessarily reduce the space available for biodiversity gain, as in fact this may be a ready by-product of the other mitigation required, and no additional

enhancement may be required. There are also other types of NSIPs where this mitigation would be much less common, and so a reduced obligation would not be appropriate.

### Question 23

**Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?**

[Yes (please explain why) / **No (please explain why not)** / Do not know]

As per our answer to Q27: a more nuanced assessment of NSIPs and the different types of environmental mitigation is needed to answer this appropriately.

A distinction is clear and useful, and we would not want to see other types of environmental mitigation dis-incentivised. However if a blanket lower BNG requirement is proposed to be leveraged to NSIPs as a result - then we do not believe the case for this is made.

It is important to be clear that habitats required for other environmental mitigation are an integral part of any NSIP; the NSIP design is unacceptable without the environmental mitigation. In many cases they are within the 'red line' of development; but even when not, they are inseparable from the consent, and should not be considered separate to the project and the BNG requirement.

### Question 24

**Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?**

[**Yes (please state what information)** / No / Do not know]

The access and maintenance requirements for Nationally Significant Infrastructure Projects can be substantively different – and are in-general likely to be harder and more expensive to access. The BNG plan would need to make clear how long-term access and maintenance for BNG purposes is to be factored into the scheme.

### Question 25

**Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?**

[**Yes** / Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated / No, it should be longer / No, it should be shorter / Do not know]

It would be preferable to retain the same duration as with other biodiversity gains.

### Compulsory acquisition

### Question 26

**Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?**

[Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / **Do not know**]

No further comments.

Marine infrastructure

### Question 27

**Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?**

[**Yes (please explain what is needed)** / No / Do not know]

We would welcome support in providing guidance on the interaction between BNG and other coastal practices/policies in these areas, in particular Heritage Coast and Seascape Character Assessment.

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

### Biodiversity gain plan

#### Question 28

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

[**Yes** / No (please explain why not) / Other (please tell us more) Do not know]

No further comments.

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

[**Yes** / No (please explain why not) / Other (please tell us more) Do not know]

It is fundamental that the core elements of biodiversity gain information are considered prior to determination. It is likely that the conditions of approval and any specific obligations will need to be agreed prior to determination, to ensure the complete biodiversity gain plan is viable. Allowing for this to be a single- or two-stage process gives appropriate flexibility to minimise impacts on planning authorities and reduce errors.

#### 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 / No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) / Other (please tell us more) / Do not know]

We have received no suggestions for additional inclusions to proposed template from our members.

Off-site biodiversity gains

**The use of off-site biodiversity gains**

### **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?**

[Yes (please state what in particular would help most) / No / Do not know]

We agree. We would not wish to see scenarios where developers have not appropriately considered the potential for on-site design to achieve biodiversity gain, before opting for off-site options – and local planning authorities should be guided to inform decision-making here.

In practice, this will be a difficult process to scrutinise. At a minimum developers could be required to report that they have consulted an appropriate professional.

### **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?**

There may be a potential over the longer term to tie biodiversity gain sites to other payments for ecosystem services (PES) schemes, including environmental land management schemes. Historically speaking, this is still a very nascent market, and it is reasonable to assume that it – and wider natural capital methods – will continue to develop.

There may be other more direct/immediate incentives which could be offered by local planning authorities.

The market for biodiversity units

### **Question 32**

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

### **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 / No (please explain why not) / Other (please tell us more) / Do not know]

Provided there is genuine additionality, as referenced, this may provide an incentive for more biodiverse development – particularly as the developer would in-effect be raising future money against current biodiversity.

It would be vital to ensure that the timing is such that the sale of biodiversity units does not take place prior to proper scrutiny and enforcement of the existing development. The excess units should be agreed early in the complete biodiversity net gain plan, rather than a late-stage windfall.

#### **Question 34**

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

Habitat banking

#### **Question 35**

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

[Yes / No (please specify what else could be done and why it is needed) / Do not know]

No response.

#### **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 / Yes, but not this specific date (please suggest an alternative date and explain your choice) / No (please explain why not) / Do not know]

No further response.

#### **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?**

[Yes (please specify what this limit should be) / No / Do not know]

At a maximum: 30 years. More realistically, it should be a time limit which inspires public confidence that the units are relevantly connected to the development in question. With that in mind, 5 years would



seem broadly sensible (as this is the time limit for reviewing a local plan). This time limit may require the market to mature further, and this time limit can be reviewed.

The biodiversity gain site register

### The criteria and process for registration

#### Question 38

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

[Yes / No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) / Do not know]

No response.

#### 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 / No (please explain why not) / Do not know]

No response.

#### 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 / No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this) / Other (please tell us more) / Do not know]

No response.

#### 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 / No / Other (please tell us more) / Do not know]

Yes, we agree this should be a transparent process.

Application fees and penalties for false and misleading information

#### 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?**

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

**b) impose financial penalties for provision of false or misleading information?**

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

**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 / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

**Additionality**

**Additionality with respect to wider environmental planning policy and legislation**

**Question 44**

**Do you agree with our proposals for additionality with respect to: a) measures delivered within development sites?**

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

This is central to the principle of multifunctional green infrastructure/SuDS in places where people live, and should be supported.

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes with regards to protected species.

With regards to other off-site mitigations: yes, in principle, but in practice this may be overly difficult to calculate. 10% of a 10% biodiversity uplift may be operating at very small scales at that point, and it could be unclear how these will be separated out and measured. The actual intervention may be the same for multiple purposes and need to be artificially separated (e.g. a single line of trees for both landscape and biodiversity mitigation).

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

It is not clear if this question is also supposed to be considering indirect impacts on protected sites (as mentioned in the proposals bullet points). The biodiversity net gain plan cannot be used as a substitute to Habitat Regulations Assessment for a European site (or any other process for considering the integrity of a national site). This is an independent consideration of the project

relevant to the qualifying/designation features. However, if an Appropriate Assessment relies on mitigation measures which generate a measurable habitat change (e.g. SANG creation) then these measurable habitat changes should be included in the net gain plan for the project.

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

We agree.

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

If public authorities are otherwise excluded from generating and selling biodiversity units but still have a strengthened duty under the NERC Act, then the UK Government will need to supply additional funding to cover the cost of the additional duties. Allowing public authorities to generate and sell biodiversity units could reduce the cost of the additional duties mandated.

Enhancements in statutory protected sites for nature conservation

**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 A and B should be eligible / No, only A (non-designated features or areas of statutory protected sites) should be eligible / No, only B (local wildlife sites and local nature reserves) should be eligible / No, neither should be eligible / Other (please tell us more) / Do not know]

In principle, yes, we agree both can be eligible for biodiversity enhancement. There is a clear case for the eligibility of local wildlife sites and local nature reserves which are otherwise under-resourced and which have limited other support in policy and legislation.

In terms of designated sites: whilst we agree in principle – in practice, this would need careful monitoring and perhaps additional guidance. It can be difficult to precisely disaggregate designated and non-designated (or ecological and geological) areas and features in a way that would not be open to legal challenge.

We would be happy to support additional guidance on this point.

**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?**

[Yes / Yes, in some circumstances (please specify which circumstances) / Yes, but within a different range of the high water mark (please specify) / No (please explain why not) / Other (please tell us more) / Do not know]

Yes for the reasons given in the consultation document.

## Stacking of payments for environmental services

### 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 / No (please explain why not) / Other (please tell us more) / Do not know]

Stacking is appropriate where there are additional outcomes and the same outcome is not delivered twice. It is obviously the case that the same parcel of land can easily deliver multiple ecosystem services, and this should be encouraged.

However, in parallel, there are ecosystem services which are less easy to synchronise. For instance afforestation solely for carbon sequestration can be of low biodiversity (and landscape) value. Similarly recreation/amenity and biodiversity can be at odds. In these cases, a robust level of professional scrutiny will be required.

## Statutory biodiversity credits

### Credit price and sales

#### 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 / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

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

[Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No response.

#### 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?**

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

No response.

#### Question 50

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

[Yes / No (if not, what further considerations should be included?) / Other (please tell us more) / **Do not know**]

No response.

Credit investment

**Question 51**

**Do you agree with the proposed principles for credit investment?**

[Yes / No (please explain why not) / Other (please tell us more) / **Do not know**]

No response.

Reporting, evaluation, and monitoring

At a project level

**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?**

[Yes / **No, not sufficient** / No, overly burdensome or not achievable / No (please explain why not and suggest how could they be improved) / Do not know]

Whilst the proposals may be sufficient in principle, in reality they are taking place in the context of a significant resourcing and skills shortfall within local planning authorities, and are likely to fail on that basis. Recent research has suggested that the majority of gains delivered under current local plan policies are unenforceable.<sup>1</sup>

There has so far been insufficient funding declared to cover the additional costs that planning authorities will incur in respect of monitoring, reporting and enforcement and this is a significant concern.

**Question 53**

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

[**Yes (please explain why this would help)** / No (please explain why this would not help) / Do not know]

Earned recognition is predicated on the fundamental principle that using skilled, competent, and (crucially) chartered/accredited professionals will drive up the standard of delivery, the reduction of

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<sup>1</sup> [The Society for Conservation Biology \(wiley.com\)](https://www.wiley.com)

risks, and the confidence of all partners. We wholly agree with this principle, and support CIEEM in their development of the existing Earned Recognition scheme.

We would like to see this model further explored and potentially broadened, working with a wider range of professionals.

At a policy level

#### Question 54

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

[Yes / **Yes, but not sufficient** / Yes, but not achievable / No (if not, how could they be improved?) / Do not know]

As per the recommendations elsewhere in this response for reporting requirements. For instance: the number of developments which do not attract biodiversity net gain by virtue of a de minimis threshold.

Additionally, we believe that the fundamental success of the biodiversity net gain policy will sink-or-swim on the basis of the level of human capital, skills and resources available to the UK market. We are aware of significant skills gaps across the market, including landscape professionals. We would like to see data captured from local authorities on this issue as part of the Biodiversity Reports; for instance the number of in-house professionals employed for these purposes.

#### 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?**

[**Yes (please describe the data and explain the reasons for your view)** / No / Do not know]

As per question 54.

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

[Yes (please describe the data and explain the reasons for your view) / **No** / Do not know]

No further comments.