



## **DEFRA consultation on Biodiversity Net Gain regulations and implementation**

DEFRA held a public consultation on how biodiversity net gain (BNG) will work in practice. This consultation set out their proposals of how BNG will be applied to Town and Country Planning Act development and, at a higher level, Nationally Significant Infrastructure Projects. [See webpage.](#)

### **What is Biodiversity Net Gain (BNG)?**

BNG is an approach to development which means that habitats for wildlife must be left in a measurably better state than they were in before the development. Achieving biodiversity net gain means that natural habitats will be extended or improved as part of a development or project. Development will be designed in a way that provides benefits to people and nature and reduces its impacts on the wider environment.

In 2018, the Government consulted on making biodiversity net gain mandatory for new development through the planning system. The responses indicated broad support for the proposals and the UK Government included provisions for mandatory biodiversity net gain in the Environment Act. These provisions will help to make biodiversity a prominent consideration in development and are expected to generate a market for biodiversity units worth around £135 million. The Act sets out the framework for biodiversity net gain requirements whilst leaving some detail to be provided through secondary legislation, policy, and guidance. Mandating biodiversity net gain will establish a consistent set of requirements and necessary exemptions which give developers clarity as to how they can meet their net gain obligations. The biodiversity net gain provisions will apply:

- To development for which planning permission is granted under the Town and Country Planning Act 1990, a new planning condition for net gain that must be met before development may commence;
- To Nationally Significant Infrastructure Projects consented under the Planning Act 2008, a new requirement to meet a biodiversity net gain objective. This will take effect after the UK Government has published a biodiversity gain statement, or statements, setting out the objective and how the requirement is to be met, including transitional arrangements.

The existing strong statutory and policy protections for our statutory protected sites, and protected species, will not be undermined or replaced by the Environment Act's biodiversity net gain measures. A proposal to deliver biodiversity net gain does not affect the weight that should be given to other planning considerations, matters of planning policy, or legal obligations including those relating to protected sites, protected species and irreplaceable habitats.

Mandatory biodiversity net gain will work in addition to existing biodiversity protections, including those provided by the National Planning Policy Framework (and associated planning practice guidance), the Wildlife and Countryside Act 1981, the Natural Environment and Rural Communities (NERC) Act 2006, the Conservation of Habitats and Species Regulations 2017, National Policy Statements, and local plan policy.

DEFRA consulted on the practical and legal implementation details of the new BNG requirement for development. Targeted stakeholder engagement will take place after the consultation to finalise any outstanding technical implementation and policy details. This will include a formal consultation on the biodiversity metric before it is published for use in mandatory BNG.

## **UK100's response to the consultation**

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

No - there needs to be a cohesive approach to biodiversity net gain, in order to create large and interlinking areas of habitat. Since smaller developments struggle to deliver net gain on site, off-site contributions will likely have a significant role. It isn't clear in the consultation document how or why off-site biodiversity gain proposals which require planning permission themselves 'would effectively decrease the biodiversity gains created' and therefore a compelling case is not offered as to why these sites should be exempt. In order to achieve the pace and scale required to meet the habitat restoration targets set in the Environment Bill, all developments should require biodiversity net gain targets.

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

No - there should be no exemption for self-builds and custom housebuilding developments. In the consultation, the language is sufficiently broad as to include all types of self-builds and custom housebuilding developments - and the question of scale/size of development is not mentioned. There is a danger that

exemption could create loopholes which would allow for very damaging, potentially large scale developments which could have a deleterious impact on biodiversity. If an exemption were being considered, it would need to reflect size as a distinguishing factor, or at the least, set a threshold for exemption - as size/scale/location of self-build/custom housing may well necessitate site clearance, through which habitat loss may well occur - so net gain requirements should stand and exemption should be avoided.

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

Yes - as flagged in the consultation, the potential for achieving biodiversity net gain on brownfield sites is significant and therefore should be included and not exempt.

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

Yes - because whilst temporary permissions may be relatively short term, any biodiversity losses which occur may be more longer term/permanent if these types of developments are exempted. Therefore temporary applications should not be exempt.

**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?**

How developments which help enable the Government to reach its Net Zero goals affect biodiversity net gain is an important consideration which warrants more attention. Where significant infrastructure (large or small scale) to enable decarbonisation (renewable energy installations for example) is deployed, there is potential for negative biodiversity impacts from the development. The two agendas of increasing and restoring biodiversity and mitigating climate change should not be seen as at odds with each other, but there may be some compromises and trade offs which need to be navigated in order to ensure that progress is made on both. Considering where modified requirements might be necessary to tackle this issue is an important point for further investigation and discussion.

**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?**

Phased approval is a logical approach but it is important to ensure that biodiversity net gain implementation can ensure that site clearing is not being undertaken by developers before planning applications are submitted. Our members at UK100 have flagged the issue of developer site clearance and call for clear mechanisms within the parameters of BNG to prevent these activities from affecting the 'gain figures'.

Moreover, there is currently a rush to get planning through before BNG comes in - its implementation needs to be introduced as soon as possible to ensure that significant developments detrimental to biodiversity are not permitted shortly before the introduction of the measures.

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

There is a need for more clarity around what this metric would look like and how it would facilitate small site applications. Any differentiation would need to be supported with adequate guidance and information, and if generally the biodiversity gain condition tool is not too onerous, this could negate the need for a separate metric.

### **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 - Lots of work was put into making sure the BNG target was in the Environment Act. But delivering BNG will require co-design between local authorities and developers to ensure that implementation of the policy works for all, and so that it does not solely become a 'developers charter'. So for small sites and BNG generally, provisions to ensure transparent collaboration between stakeholders is important.

Additionally, there are some indications that biodiversity surveys are not necessarily picking up where all sites of potential gain can be found - a systematic review of how surveys are currently working and how they can be improved would greatly help reduce the burden on small site developers (and the delivery of BNG more generally).

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

Broadly yes, most importantly the clarity around ensuring the potential for advance clearing of habitats. This is welcomed, but the provisions for how this can be implemented in practice need to be better spelled out.

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

No- it should be longer - it is important that habitat restoration is long term and in order to ensure that ecological and climate benefits of improving biodiversity, such interventions need to be retained, so 30 years doesn't not seem a sufficiently long minimum duration. Especially, as noted above, off-site biodiversity needs to be networked to scale restoration. Allowing habitat changes to fully embed in a new ecosystem, they need to be retained for several decades.

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

Generally yes - although there is a need for more information about resources and support that can be provided to facilitate the process of completing biodiversity gain plans.

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

Yes although clarity is needed to ensure that developers cannot clear sites before applying for planning. There need to be mechanisms for preventing this affecting the 'gain' figures before planning permission is sought.

**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?**

More information could be provided on the habitat in situ before the planning process begins. More resources are needed to ensure that all information can be obtained pre-application and that the methods used to determine net gain are capable of identifying all potential sites. More information on how the best approach for species/habitat to deliver the BNG has been determined would also be helpful.

**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

**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?**

No - The rationale for this date is not clear, so it is difficult to ascertain whether it is logical and reasonable.

**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?**

Information about any removals from the site in advance of the biodiversity net gain interventions would be an important inclusion to ensure that the biodiversity gain site is legitimate as this will identify actual 'gain' over and above simple replacement of (potentially non-comparable) native habitat.

**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

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

No - the consultation recognises "that capacity and expertise is essential, alongside the right powers, policy and guidance, for planning authorities to enforce biodiversity gain requirements." More information is required about what powers, policies and guidance will be provided in order to ensure that capacity and expertise of local planning authorities are capable of undertaking the project level management, monitoring, enforcement and reporting. Without such information about what will be offered in this respect it is difficult to understand whether the proposals are sufficient, achievable or what the degree of burden will be on all stakeholders. It is also important to ensure that the mechanisms for engagement between stakeholders are also sufficient.

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

It may help, but it cannot be used as a guaranteed measure for ensuring focus and scrutiny and therefore, additional mechanisms may be required.

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

No - As above, without understanding how capacity and expertise can be facilitated/ensured within the local planning authority context, it is very difficult to comment on the achievability and sufficiency of the proposals for reporting, evaluation and enforcement.