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Department
for Environment
Food & Rural Affairs

Biodiversity offsetting in England

Green paper

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Any enquiries regarding this document/publication should be sent to us at:

bio.offsets@defra.gsi.gov.uk

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1. Foreword

England faces the twin challenges of growing its economy and improving its natural environment. These are my first two priorities for Defra, and provide the impetus for this green paper.

We must be open to new thinking about how our planning system deals with biodiversity if we are going to achieve these goals.

Our economy cannot afford planning processes that deal with biodiversity expensively and inefficiently or block the housing and infrastructure our economy needs to grow.

Our environment cannot afford the wrong type of development which eats away at nature. Although the planning system is already delivering some truly sustainable development, we should look at new ideas that could help it maintain and improve our ecosystems, air, water and soils as they underpin sustainable economic growth in the long-term

Fortunately, as the Ecosystems Market Task Force and Natural Capital Committee have set out, there is a way we can make our planning system even better for the environment and developers: biodiversity offsetting.

Countries as diverse as Australia, Germany, India and the United States and more than 20 others are already using offsetting.

Offsetting is a simple concept. It is a measurable way to ensure we make good any residual damage caused by development which cannot be avoided or mitigated. This guarantees there is no net loss from development and supports our ambition to achieve net gain for nature. For developers it can offer a simpler, faster way through the planning system. It can be quicker and more straightforward to agree a development's impacts and can create a ready market to supply compensation for residual damage to nature.

In May, I held an offsetting summit at which I heard the views of developers, conservation bodies, planning professionals, economists and others. This confirmed the level of interest in the concept and that the success, or failure, of offsetting will depend on the detail of the scheme we adopt.

This paper sets out a consultation on options for an offsetting scheme tailored for England and its habitats and species and the Government's preference for giving developers the choice to use offsetting. Your responses will be welcome, particularly as they help us to understand the evidence which will guide our choice.

Owen Paterson

Secretary of State for Environment, Food and Rural Affairs

2. Introduction

1. England needs both development and nature for its long-term prosperity. Development provides the homes and infrastructure needed to create wealth. Nature underpins our economy: the soil needed to grow food, the water that sustains life, the insects which pollinate crops and wild plants, the woods, forests and wild places that provide space for exercise and enjoyment.

2. The planning system[1] should help deliver both these objectives. The best planning decisions do manage to protect and enhance biodiversity; however the system does not always work as well as it should. Some planning decisions take too long and the outcome can be too uncertain, which can hinder development. At the same time biodiversity impacts are not always adequately taken into account, or mitigated or compensated for in ways that deliver enduring environmental benefit.

3. Biodiversity offsetting has the potential to help the planning system deliver more for the economy and the environment. This green paper:

- Explains what biodiversity offsetting is
- Sets out the Government's objectives to avoid additional costs to developers and achieve better environmental outcomes and explores how offsetting could help achieve these objectives
- Sets out the options for biodiversity offsetting and the Government's preference to give developers the choice to use offsetting and seeks your comments
- Seeks evidence to improve Government's understanding of the costs and benefits of biodiversity offsetting compared to existing approaches
- Asks questions about how detailed design of an offsetting system should be approached

4. The consultation runs until 7 November 2013. Section 8 sets out how you can respond.

[1] The proposals in this document primarily apply to the Town and Country Planning Act (1990), Highways Act (1980) and Planning Act (2008). The Government would look to apply offsetting in similar terms to other terrestrial planning regimes.

3. Biodiversity offsetting

5. Biodiversity offsets are conservation activities that are designed to give biodiversity gain to compensate for residual losses. They are different from other types of ecological compensation as they need to show measurable outcomes that are sustained over time.

6. Around the world more than 25 countries including Australia (see box 1), Germany, India and the United States have put in place biodiversity offsetting systems, recognising the advantages offsetting can offer:

- It ensures there is “no net loss” of biodiversity as offsets demonstrably compensate for the residual losses and are secured for the long term; and provides scope to achieve an overall net gain for biodiversity through locating the right offsets in the right place to improve ecological networks.
- It can make compliance with biodiversity protection provisions quicker and more transparent, certain and consistent

Box 1: Biodiversity offsetting in Victoria, Australia

The Australian state of Victoria uses the ‘habitat hectare’ as the unit in its BushBroker biodiversity offsetting scheme. The value of a particular site in habitat hectares is calculated with a standard methodology taking account of:

- The area of the habitat
- The quality of the habitat as assessed in an easy-to-use framework (e.g. woodland quality is based on a number of factors such as canopy cover)
- The context of the habitat based on underlying public data which looks at the scarcity of the habitat, its fit within the wider ecosystem and its importance for wildlife

Before planning permission is enacted a developer must secure an offset which provides an environmental gain worth the same number of habitat hectares. A thriving market for habitat hectares has now emerged to meet the state’s offset requirements.

7. A number of these systems are underpinned by a metric which allows impacts on nature to be quantified in standard biodiversity units. Using biodiversity units makes it easier to apply the mitigation hierarchy (see box 2). A metric provides a framework non-experts can use to assess how different choices impact on biodiversity and whether harm can be avoided or reduced. In addition, if residual harm cannot be avoided the same metric allows the compensation requirement to be quickly calculated, rather than expensively negotiated on a case-by-case basis: the offset simply needs to supply a sufficient number and type of biodiversity units to compensate for the loss.

Box 2: The mitigation hierarchy

The mitigation hierarchy is a policy for ensuring activities do not have unnecessary impacts on the environment:

- In the first instance harm should be **avoided**, for instance by locating development at a different site
- Where this is not possible the impacts should be **mitigated**, for instance through the detailed design of the development
- Lastly any residual impacts should be **compensated** for, for instance by restoring or recreating habitat elsewhere

The mitigation hierarchy is embedded in many areas of environmental legislation and regulation. For example, under the National Planning Policy framework “if significant harm 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.”

4. Why the Government is interested in biodiversity offsetting

8. The Government is determined to succeed in the global race by creating growth and delivering lasting prosperity. At the same time the Government wants this generation to be the first which leaves the natural environment of England in a better state than it inherited.

9. Often these aims have been seen as incompatible. The planning system is intended to overcome this tension by ensuring development is genuinely sustainable, and that, in line with the mitigation hierarchy, adequate compensation is put in place when harm cannot be avoided. While it often achieves this aim evidence suggests the planning system can do better:

- Complying with policy on biodiversity is a small but significant proportion of the overall costs to developers of complying with the planning system. This includes the cost stemming from delay and uncertainty in the system. The cumulative costs affect the viability of projects and in some cases may delay or stop projects from going ahead.
- In some cases biodiversity impacts are not effectively considered or properly taken into account. The impacts on wider ecological networks are not usually considered.
- When compensation or mitigation is put in place it can be inadequate. It may also use land which would be better put to use for development. In addition it may not be managed to maintain the biodiversity benefit in the long term, as there is no simple and cost effective system to do this.

10. The Government has already taken steps to improve the planning system. The National Planning Policy Framework has vastly reduced the number of pages of planning policy, making the planning system less complex and more accessible. The Growth and Infrastructure Act supports this, for example by: reducing the volume of extra paperwork required with a planning application; removing overlapping development consent regimes; and taking steps to tackle poorly performing planning authorities. Following the Habitats and Wild Birds Directives Implementation Review, 28 measures are being put in place to reduce unnecessary cost and delay stemming from the processes to ensure compliance with the directives.

11. Biodiversity offsetting can support improvement to the planning systems in particular how it tackles the impacts of development on nature. It has the potential to be:

- **Quicker**: a simple, standard framework for evaluating the impacts of development on biodiversity can speed up assessment. Allowing any required compensation to be bought “off-the-shelf” from a market removes the need for negotiation on what will be provided.

- **More certain**: a standard framework gives developers certainty on what the planning system will require and allows biodiversity to be considered early in project development to better mitigate impacts before they occur.
- **Cheaper**: a simpler less complex process can reduce costs for all parties. Compensatory habitat can be provided away from the development site by specialists on less-expensive land. In some circumstances this may allow a larger development footprint (i.e. where ineffective onsite compensation is replaced by an offset) and could unblock development that has been through the mitigation hierarchy but remains unfeasible because the developer cannot provide the required compensation onsite or negotiate an offsite solution.
- **Simpler**: a national metric would ensure consistency across the country, meaning small and large developers alike can benefit from a more coherent system rather than grapple with differing local approaches.

Box 3: Thameslink

Network Rail's £4.6bn Thameslink Programme represents a major upgrade of existing rail infrastructure along one of Europe's busiest stretches of railway. Sites include urban depots with little surrounding vegetation cover, scrub-covered railway embankments in Greater London and woodland areas in the surrounding countryside. This meant the project looked at a number of biodiversity considerations including green corridors, linking habitats, and migration routes for protected species

In the first instance Thameslink looked to avoid and mitigate impacts by reducing the amount of vegetation that would be cleared, or relocating infrastructure installation. Where residual loss could not be avoided, Thameslink has undertaken on site enhancements along sections such as landscaping and planting schemes sympathetic to the biodiversity of the area. In addition more major projects have been put in place:

- Around 1500 trees were planted at Woodland Trusts' Heartwood Forest to compensate biodiversity impact from all permanent vegetation clearance works along the route.
- A 700m^2 brown roof has been constructed on the new ticket hall building at Farringdon Station. This has contributed 20% of the Borough's annual Biodiversity Action Plan target for habitat creation, and was made a condition of the planning permission for the building. The main purpose of the roof is to provide habitat for invertebrates, which will in turn provide foraging opportunities for a number of birds including black redstarts.

In its second stage, Thameslink set a target to achieve a net gain in

biodiversity. Thameslink, with support from Parsons Brinckerhoff, used Defra's biodiversity offsetting metric to calculate the baseline number of biodiversity units, units lost from habitat clearance and units gained from onsite planting and offsite habitat creation. The metric provided a solution Thameslink could use to measure progress towards its target and information that fed into collaboration with a conservation partner on a biodiversity offset. Given restrictions on planting along the railway corridor, the offset is being designed for Thameslink to deliver long-lasting benefits for nature conservation.

4.1 Offsetting pilots

12. Biodiversity offsetting pilots have been running in six areas since April 2012. They are due to be completed in April 2014. The pilots have already provided important information that has influenced the Government's thinking about biodiversity offsetting. In particular, they have shown that offsetting needs to achieve a critical mass to deliver a flourishing and effective system. The Government therefore proposes to continue the pilots so they provide further evidence that can be fed into guidance and regulations that will need to be put in place to set up an offsetting system.

13. In addition the Government will continue to work with a number of complementary projects that are looking to use offsetting outside the pilots. These will also provide valuable evidence that will be fed into final proposals.

5. Applying biodiversity offsetting in England

14. Having examined the potential for biodiversity offsetting, the Government is consulting on introducing a biodiversity offsetting system in England. The Government will only introduce an offsetting system it is satisfied it will:

- Improve the delivery of requirements in the planning system relating to biodiversity so it is quicker, cheaper and more certain for developers.
- Achieve net gain for biodiversity by: ensuring that the number of biodiversity units lost at a development site is equally matched by the number of biodiversity units replaced at an alternative site (ensuring "no net loss"); and seeking to locate offsets in a way that enhances ecological networks (achieving "net gain").
- Avoid additional costs to businesses. This will ensure it is consistent with Government's commitments: not to increase net burdens on housing developers over the Spending Review 2010 period; and to one-in, two-out on all regulatory burdens[2].

15. The Government considers that any system meeting these objectives would have the following characteristics:

- It would be transparent and consistent mechanism for developers, offset providers, planning authorities and stakeholders. The system must improve the process of considering biodiversity and be attractive to developers and offset providers so they are encouraged to participate. At the same it must be easy for the public to understand so that they have confidence it is protecting biodiversity.
- It would observe the mitigation hierarchy. Projects should still look to avoid and minimise harm as much as possible before offsetting. This includes accepting that in some circumstances offsetting will not be appropriate in view of the importance of the biodiversity that will be affected or the difficulty of creating similar habitat.

Question 1: Do you think the Government should introduce a biodiversity offsetting system in England?

Question 2: Do you think the Government's objectives for the system and the characteristics the Government thinks a system would display are right?

16. However there are a series of high-level decisions that need to be taken about offsetting. The decisions that are taken will affect how it might be implemented and, as a result, the experience of developers, planning authorities and offset providers.

[2] www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business

5.1 The offsetting metric

17. Any offsetting system in England would be underpinned by a standard metric. The metric would be the way to quantify impacts on biodiversity. It would ensure that the impacts of a development are properly assessed and that offsets lead to genuine environmental gain. It would allow biodiversity losses and gains affecting different habitats to be compared and ensure offsets were sufficient to compensate for residual losses of biodiversity.

18. Defra has already developed an offsetting metric that is being used in the offsetting pilots underway in six areas of England since April 2012. The metric was developed to strike a balance between being both simple to use and sophisticated enough to cope with the range of habitats types and conditions seen in England. Box 4 provides more details on how the metric works. The pilot metric could form the basis for the metric used in any national scheme. However the Government recognises it could be improved (for instance to reflect species and improve the way it assesses habitat condition) so would welcome views on the metric including a number of detailed aspects considered in section 6.

Question 3: Do you think it is appropriate to base an offsetting system on the pilot metric? If not is there an alternative metric that should be used?

Question 4: If you think the pilot metric is the right basis for an offsetting system:

a. Are there any other factors which should be considered when quantifying biodiversity loss and gain?

b. Are the weights given to the different factors appropriate?

c. Are there any other changes you think should be taken into account?

(Please also refer to questions under section 6)

5.2 Fit with planning process

19. The Government thinks biodiversity offsetting is likely to work best if it is used as part of the planning system. This is because it is the planning system that puts in place the requirement to consider impacts of developments on biodiversity and because planning decisions can significantly change the biodiversity impacts of a project (e.g. by altering a development's footprint on a site). Integrating biodiversity offsetting with the planning system might mean:

- At the plan-making stage, planning authorities could use the metric to assess the biodiversity value of different areas of land. This could be part of a Strategic Environmental Assessment of the proposals and would help inform choices on how to allocate land by clearly identifying high-value areas that should be avoided and establishing which areas are of lower value and more suitable for development.

Box 4: Pilot biodiversity metric

Biodiversity offsetting pilots are underway in 6 areas. The pilots use a metric which quantifies the value of habitats on the basis of three criteria:

- The **distinctiveness** of the habitat is assessed as low, medium or high. Distinctiveness reflects, amongst other factors, the rarity of the habitat concerned (at local, regional, national and international scales) and the degree to which it supports species rarely found in other habitats. Guidance has been provided alongside the pilot, setting out the distinctiveness rating for different habitat types.
- The **quality** of the habitat is assessed as poor, moderate or good. This assessment is based on a standard framework. In the pilots this has been Natural England's "Higher Level Stewardship: Farm Environment Plan (FEP) Manual".
- The **area** of the habitat in hectares.

Having assessed the habitat against these factors, its value in "biodiversity units" can be calculated using the following table:

Value of 1 ha in "biodiversity units"		**Habitat distinctiveness**		
		Low (2)	**Medium (4)**	**High (6)**
Habitat quality	**Good (3)**	6	12	18
	Moderate (2)	4	8	12
	Poor (1)	2	4	6

Offset providers use the same system is used to calculate the number of biodiversity units they can provide, taking into account three additional factors:

- The **risk** associated with habitat restoration or recreation, as not all activities will achieve the desired outcome. An offset provider may need to restore or recreate a larger area to have confidence that the required number of "biodiversity units" will be created. For the offset pilots, restoration and recreation activities have been classified in four bands from low to very high difficulty. For low difficulty sites no increase in area is required. For very high difficulty restoration or recreation activity 10 times as much area will need to be improved to generate the same number of "biodiversity units".
- The **time** it will take to restore or recreate the habitat. In this period society will experience a net loss of biodiversity, so the system can require the offset provider to do more to compensate for this temporary loss. In the pilots this is handled by applying a 3.5% discount rate as set out in HM Treasury's Green Book.
- The **location** of the offset. In the pilots local authorities have set out strategies on where to locate offsets to create maximum environmental gain. Larger offsets need to be provided if they are outside the area identified for offset provision.

- The planning authority would consider the application in line with the mitigation hierarchy, and where relevant whether the developer had taken sufficient action to minimise harm to biodiversity. The authority would consider the amount of residual harm that may occur in terms of biodiversity units and whether any additional steps should be taken, taking into account the views of the developer and any other interested parties. The planning authority and developer would agree whether any additional steps should be taken and the amount of residual harm that occur in terms of biodiversity units, if any.
- If planning permission is then granted, it would be subject to the developer securing an offset which provided the same number of biodiversity units as would be lost (the system would need to ensure offsets are capable of being a material consideration for a planning decision). As the offset could be provided by a third party this could avoid the need to include detailed requirements to put in place and manage compensatory measures in section 106 or similar agreements.

20. Box 5 provides a theoretical example of how offsetting might work in practice based on the pilot offsetting metric. Section 7 discusses the legal requirements for offsetting.

Question 5: Do you think offsetting assessment should be used when preparing a planning application for a project?

Question 6: Do you agree that it should be the responsibility of planning authorities to ensure the mitigation hierarchy is observed and decide what offset is required to compensate for any residual loss? If not, why, and how do you think offsetting should be approached in the planning system?

5.3 Affected development consent regimes

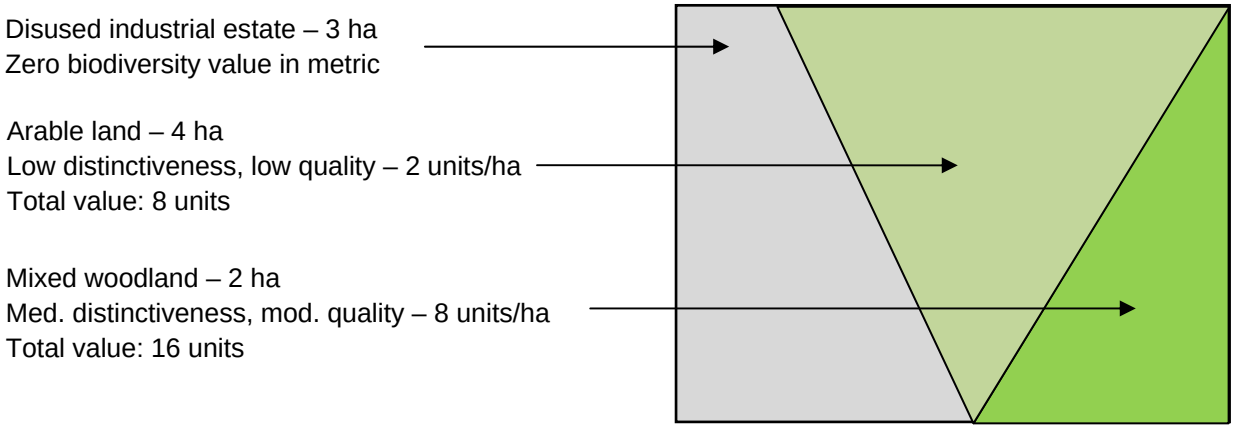
21. The planning system is not a single framework. Projects are consented under different regimes depending on the type of project and its scale. However nature does not differentiate between the impact caused by residential development under the town and country planning regime, or a road under the Highways Act 1980. Offsetting could be used under any relevant terrestrial development consent regimes.

22. It is possible that offsetting could have a role to play in some circumstances in the marine environment (i.e. beyond mean low water mark). We do not intend, however, to include the marine environment within our general proposals for an offsetting regime at this stage. This is because there is currently much less understanding or experience of applying offsetting measures to the different circumstances of the marine environment. The impacts of marine development will continue to be considered on a case-by-case basis in accordance with existing guidance and legislation. Offsetting could apply in coastal zones, with suitable recognition of their particular circumstances.

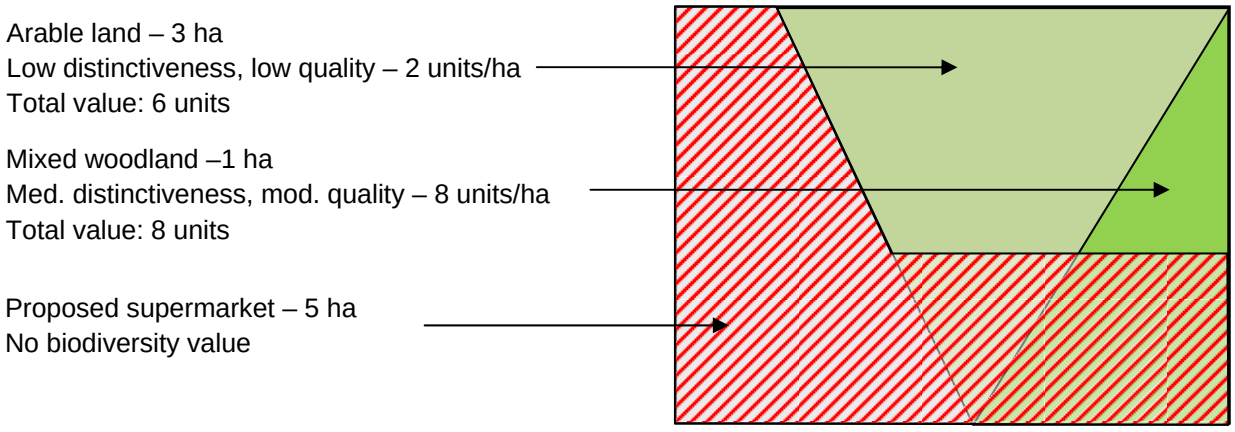
Question 7: Do you think biodiversity offsetting should have a role in all development consent regimes?

Box 5: Example of the pilot biodiversity metric being used

A developer wants to build a supermarket on the 9 ha site below. Using the metric he quantifies the value of the site at 24 units.



The developer' application places the supermarket on the disused industrial estate but puts car parking and access road on the arable land and woodland as this closest to a main road. The developer's application sets out the impact in terms of units and shows the undeveloped part of the site would be worth 14 units. The developer therefore proposes to buy an offset worth 10 units (i.e. the loss in value of the site).



The planning authority is concerned about the amount of woodland that will be lost. Following discussion with the developer, the planning authority negotiates a revised design that would protect an additional 0.5 ha of woodland at the expense of losing a further 1 ha of arable land.

This increases the value of the remaining habitat to 16 units (14 units less 1 ha @ 2 units per ha plus 0.5 ha @ 8 units per ha). **Planning permission is granted on condition that the developer secures compensation equivalent to 8 units of biodiversity gain**.

5.4 Choice on use of offsetting and offset location

Choice on use of offsetting

23. The Government sees offsetting as one way to meet existing requirements in the National Planning Policy Framework and other planning regimes to have regard to biodiversity. There is therefore a choice on when offsetting might be used instead of existing arrangements and a number of options on how this could work:

- A **fully permissive** approach where developers could choose whether to use the offsetting metric to assess their project's impacts and choose the means of securing compensation (i.e. through a section 106 agreement or by obtaining an offset).
- A **partially permissive** approach where developers might be required to use the offsetting metric to assess their project's impacts and then be free to choose to the means of securing compensation (i.e. through a section 106 agreement or by obtaining an offset).
- A **uniform** approach where developments that exceed a certain threshold would be required to use the offsetting metric to assess their project's impacts and to obtain an offset as the mechanism for compensation. Developments below the threshold would be able to opt-in to using offsetting. The impact of different thresholds is discussed in box 6.
- A **Community Infrastructure Levy** based approach. Under this approach developers would not directly secure offsets. Instead the charging authority, usually the planning authority, would purchase offsets sufficient to compensate for the aggregate impact on biodiversity of developments in their area. The offsets would be funded by the levy collected by the planning authority and so would need to be built into their charging schedule. The funds need not be ring-fenced for biodiversity but could be part of the general levy receipts to be used to fund infrastructure.

24. The Government is clear that an offsetting system must deliver benefits for development, reducing not increasing burdens, at the same time as delivering net gain for the environment. Given the uncertainties around the costs and benefits of the different options, the Government currently favours a fully permissive approach, i.e. giving developers the choice to use biodiversity offsetting where it would enable them to meet existing requirements more efficiently than happens currently.

25. The Government however recognises that its estimates of the costs and benefits are based on a number of assumptions as set out in the draft impact assessment that accompanies this paper. Through this consultation process the Government would welcome further views and evidence on all options set out above. This will allow the Government to take a fully-informed final view. Evidence would be needed that an alternative would also provide confidence that additional burdens would be avoided and appropriate development supported. There are four particularly important areas:

- The costs of biodiversity offsetting. The impact assessment recognises costs can come in a number of areas:
    - There may be costs for planning authorities setting establishing biodiversity offsetting.
    - Some developers may need to provide compensation when they do not at present and under an offsetting system there would be greater security over its long-term management.
    - The costs from undertaking the transactions required under both the current system and under an offsetting system.
- The potential savings:
    - Offsetting can be quicker simpler and more certain than existing mechanisms, reducing the process costs. Australian experience suggests assessments alone can be half the cost under an offsetting system. It has been suggested the pilot metric can be applied to a site in as little as 20 minutes.
    - Compensation is often placed onsite as it can most easily be secured on land owned by the developer. However, on-site compensation is not always properly managed making it ineffective in delivering environmental outcomes. Offsetting, once the mitigation hierarchy had been followed, could allow effective compensation to be secured offsite, freeing up developable land and doing more for the environment as it will be properly managed for the long-term.
    - Sometimes it is not possible to secure compensation onsite (e.g. if the site is too small), and offsite compensation may have been considered unacceptable or too difficult to negotiate. Offsetting could provide a way of compensating in such situations, allowing developments to go ahead that would currently be unviable.
- The benefits of creating a larger market:
    - A large market would encourage competition and bring in offset providers which would be expected to drive down costs.
    - Evidence suggests that significant economies of scale kick-in with large-scale habitat restoration and recreation. For example, the RSPB estimates that the per hectare cost of a 250 ha project is half that of 100 ha project. Projects of this scale would only come forward if demand is high-enough.
    - If supply is low, developers might find it hard to identify a suitable offset slowing the system down and increasing transaction costs, or forcing the developer back to the current case by case approach.
- How best to create a large market

- How and to what extent a successful biodiversity offsetting market could be fostered under a permissive approach through a clear, simple and attractive system for providers and buyers of offsets; or whether requiring developers to participate is the only approach that would drive demand.

26. The evidence on each of these areas will vary between the options for choosing when offsetting should be used and with the other options for an offsetting system discussed in the rest of this paper (e.g. location, application of the metric). It would be especially helpful to understand how the issues set out above may be affected by choices on the detailed design of an offsetting system so it can be designed to minimise unnecessary cost and difficulty.

Box 6: Thresholds on offsetting

One option set out in this paper is to require offsetting for planning applications above a certain threshold. Thresholds could be set in different ways but one approach would be to use a threshold based on the size of the project. This would have an effect on the number of projects that need to undertake a biodiversity offsetting assessment and the amount of offsets required. The aim would be to ensure a sufficient market for offsets while taking a permissive approach towards development under the threshold. This is illustrated in the table below that looks at the impacts on different thresholds on housing development and the sector's demands for offsets[3].

Threshold	Annual size of offset market (ha)	Housing requiring an offset	
		By % of planning applications	By % of housing units
No threshold	4,040	100%	100%
10 housing units	2,870	10%	71%
25 housing units	2,544	7%	63%
200 housing units	710	0.4%	18%

[3] The source of the data is Glenigan (www.glenigan.com), a private firm that supplies the Department for Communities and Local Government with information on the status of planning applications. Information from Glenigan is commercially available for a fee

Offset location

27. Another consideration affecting the size of the market is the location of offsets. In theory, an offsetting system could allow an offset to be provided anywhere, including overseas, as long as it would secure ecological gain. In some cases there might even be an ecological reason to do so. For example the best way to support a migratory bird species could be to improve its wintering quarters or the resting and feeding sites it uses during migration at some distance from the proposed development.

28. While the Government does not propose allowing international offsets, letting offsets be provided anywhere in England might lead to a net loss in some areas of the country (e.g. where there is greatest value in development) with net gain elsewhere (e.g. areas where offsets can be secured most cheaply). This could be both economically and environmentally beneficial. For example it would enable offsets to be provided in the place where they would have the most impact in achieving coherent ecological networks. However it could have adverse effects, in particular local communities under development may not want to lose the benefits of the biodiversity sites that are being offset. Limiting the location of offsets could address this issue and help preserve local biodiversity. However it might tend to fragment the market geographically, potentially pushing up costs and reducing the flexibility to address the Lawton vision (see section 6.4) at a national level. If the Government chooses to introduce limits on the location of offsets, options would include:

- Requiring offsets to provide within a certain distance of the development. This could be based on the distance from the development, administrative boundaries (e.g. within the same upper or lower tier local authority) or a landscape scale area such as Natural England's National Character Areas[4].
- A hybrid option where trading is restricted for habitats that are considered more distinctive under the metric. Under this model low-distinctiveness habitats might be able to be offset anywhere. For moderate and high-distinctiveness habitats offsets might have to be in the same local authority area.
- A model where a larger offset has to be provided if it is further away. A similar approach to this is taken in the pilots where an offset has to provide three times as many units if it is outside the area prioritised in the local offsetting strategy.

[4] www.naturalengland.org.uk/publications/nca/default.aspx

Question 8: Do you think developers should be able to choose whether to use offsetting? If so what steps could Government take to encourage developers to use offsetting?

Question 9: If you think developers should be required to use offsetting do you think this requirement should only apply above a threshold based on the size of the development? What level should the threshold be?

Question 10: Do you think there should be constraints on where offsets can be located? If so what constraints do you think should be put in place?

Question 11: Do you have any comments on the analysis set out in the impact assessment?

Question 12: Do you have evidence that would help refine the Government's analysis of the costs and benefits of the options considered in this paper? In particular, evidence relating to:

a. The amount of compensation already occurring where there is residual biodiversity loss which cannot be avoided or adequately mitigated
b. The method for estimating costs and their magnitude
c. The method for estimating benefits and savings and their magnitude
d. How to capture the wider social and environmental benefits of maintaining England's stock of biodiversity and delivering a coherent ecological network
e. Likely take up of offsetting under a permissive approach

5.5 A national approach

29. One of the Government's success criteria is that an offsetting system should be simple. The Government thinks this could be undermined if the offsetting system is not applied consistently across England and there were local variations in the system that could result in additional, costs and delays to development.

Question 13: Do you think offsetting should be a single consistent national system without scope for local variation?

5.6 Restrictions on the offsetting system

30. Biodiversity offsetting allows impacts on nature to be quantified. In theory, this allows any two impacts to be compared and any environmental gain to be offset against any environmental loss. In practice, there are scientific and legal limitations on offsetting:

- Some habitats are impossible to recreate on a meaningful timetable. Ancient woodland and limestone pavement fall into this category. Any development which damages these habitats effectively leads to an irreversible loss.

- Legislation can constrain when and where compensation is acceptable for impacts. For example, under the Habitats Directive plans or projects adversely affecting a European site are only allowed if there are no feasible alternatives, there are imperative reasons of overriding public interest (IROPI) and the integrity of the Natura 2000 network is maintained. Offsetting cannot cut across this and other similar legal protections.
- Similarly some species have strong protections under the Habitats Directive and any proposed offsetting approach that affected such species would need to adhere to these extant legal protections.

31. Whilst these constraints exist, the Government stills sees an offsetting market as being a useful tool in these situations as it could enable compensation to be provided more quickly and cheaply than currently happens. However compensation via the offsetting market could only happen if existing policy and legal tests were met:

- For irreplaceable habitats, including ancient woodland, the conditions of paragraph 118 of the National Planning Policy Framework would need to be taken into account.
- For Sites of Special Scientific Interest the conditions of paragraph 118 of the National Planning Policy Framework would have to be met. The Government considers this could only be the case, depending on the circumstances, if the offset provided the same type of habitat as close as possible to the Site of Special Scientific Interest that would be harmed.
- For European sites the tests under Article 6(4) of the Habitats Directive would have to be passed. This would only happen if the offset maintained the integrity of the Natura 2000 network (this might require providing the same type of habitat as close as possible to the Natura 2000 site that would be harmed).

Question 14: Do you agree with the proposed exceptions to the routine use of biodiversity offsetting? If not, why not? If you suggest additional restriction, why are they needed?

Question 15: Which habitats do you think should be considered irreplaceable?

5.7 Protected species and offsetting

32. A wide range of species are protected under international and domestic laws (e.g. the Habitats Directive, Wildlife and Countryside Act). Developers often face particular challenges in dealing with protected species especially when they are found unexpectedly on a site late in the development process, often leading to long and expensive delays. At the same time the current case-by-case approach to protection does not achieve the best ecological outcome as it can miss strategic opportunities to improve species' conservation status.

33. The Government therefore intends to apply offsetting to protected species as part of any wider biodiversity offsetting system while recognising this is not a simple proposition:

- The legal protections for some wild species are, rightly, strong. For example, planning authorities must have regard to the requirements of the Habitats Directive so far as these may be affected by a decision to grant planning permission. Among other things the Directive prevents the killing or disturbance of protected species, or the destruction of its breeding sites unless a purpose set out in the law is fulfilled, there are no alternatives and favourable conservation status for the species is maintained. Any offsetting system must comply with these rules.
- It can be hard to identify whether a development will affect a species. For example, some species migrate or hibernate so a developer may not be aware they are on the site unless they undertake surveys at the right time of year. This makes it more challenging to use a simple metric to quantify the impacts on a particular species and identify the offset that needs to be put in place.
- The biology of species affects how easily offsetting can be applied. Some reproduce quickly and in large numbers and it is relatively easy to create the habitat they need (e.g. great crested newts). Others are at the other end of the spectrum making it harder to create offsets.

34. The Government thinks offsetting could work within these constraints provided a number of features are put in place:

- The mitigation hierarchy would need to be respected.
- For species protected by the Habitats Directive offsets would be species specific. This would mean an impact on, for example, great crested newts could only be offset by a project which helped great crested newts elsewhere. It would also mean a different metric would apply to each species as different activities will have to be undertaken to create ecological gain.
- There would need to be an investment in underlying data to generate a better picture of the distribution and trends of protected species' populations. This will ensure a clear understanding of the species' conservation status and the importance of individual sites to the national population.
- Having better national data would allow a more risk based approach to be taken. In practice this could allow offsetting to be the default approach for populations that are not critical to a species' favourable conservation status. However, where a more important population would be affected the bar would need to be set higher. Achieving a clearer picture of species' populations will help identify when different approaches would have to be taken. Importantly, this information would help developers identify in advance whether their proposed site was likely to have significant protected species issues.

35. The Government is looking to apply offsetting to great crested newts in the first instance as they are commonly encountered by developers, and offsetting approaches are thought to be likely to work for the species. Box 7 sets outs current thinking on how offsetting might work for this species. The Government will work up its proposals in more detail alongside this consultation, in discussion with stakeholders.

Question 16: Do you think offsetting should in principle be applied to protected species?

Question 17: Has the Government identified the right constraints and features that need to be addressed when applying offsetting to protected species?

Question 18: Do you agree that great crested newts should be the first area of focus?

Question 19: Do you have any comments on the Government's thinking on how to apply offsetting to great crested newts?

Question 20: Should offsetting be considered for any other species in the near future taking account of the constraints on species offsetting?

Box 7: Applying offsetting to great crested newts

Great created newts are a widespread but rare species occurring across much of England and which are protected under European law. Over the years the population has declined as its natural habitat on agricultural land has been lost and fragmented. This has driven the species into areas of greater development pressure such as urban peripheries and brownfield sites.

The species presents particular difficulty for developers as there is poor data on where it is likely to be found so its presence can often be a surprise. In addition, it hibernates between October and March. This means it can only be surveyed for between April and June and can only be captured for relocation between April and September. If developers miss these windows this can have large impact on project deadlines.

Offsetting has the potential to address both these issues and can be introduced in a phased way:

- Defra is developing an eDNA test that would allow water samples to be analysed to establish whether or not great crested newts are present in a pond. This will provide a much cheaper way for developers to establish whether they might affect the species and if that is a risk they want to take. The test is currently undergoing validation and is expected to be available in early-2014.
- Analytical models can be used to predict where great crested newts might be present and in what numbers, based on underlying biological and geographic data. A robust model will give a better picture of the species' conservation status. This will allow more informed decisions on where development will have greater or lesser impacts and where conservation activities can have greatest benefits. This could also allow a tiered approach to considering impacts on the species:
  - In areas that are predicted to have a less important newt population it might be acceptable to allow development to go ahead provided action is taken to improve the species' overall conservation status (e.g. improving an area of existing habitat).
  - However in areas with a significant population, much more care would need to be taken with detailed surveys and bespoke mitigation put in place.

  Government is considering developing a predictive model that could be validated in the 2014 surveying season with an aim to roll it out in 2015.
- The provisions to secure offsets set out in this paper (covenants, management plans etc.) would also apply to compensation for great crested newts. This would allow higher quality compensation to be put in place away from development sites by specialist providers. This would be expected to drive down costs but could also create larger sites that have greater benefit for the overall newt population. The predictive model could also be used to decide where the offsets should be placed to maximise their contribution to the great crested newt favourable conservation status.

5.8 Covenants, management agreements and an offset register

36. Generally planning permission assumes a development will be permanent. This means the biodiversity loss from development will also be considered permanent. The Government is therefore interested in how to ensure offsets secure biodiversity gain for the long term and avoid the risk of net loss of biodiversity.

37. One option is for a conservation covenant to be entered into consisting of an undertaking to provide an offset on the land. The covenant could place conditions on how the land could be used and could require it to be managed in certain ways for the benefit of biodiversity. Most importantly the covenant would be binding on whoever owns the land so the biodiversity benefit would be maintained even if it changed hands. This would ensure the land was managed for biodiversity gain. However the covenant could be released if, through a planning decision, it was considered developable land. As offsets would be of biodiversity interest careful consideration of the mitigation hierarchy would be required before an offset site could be developed, including taking compensatory action if significant residual harm could not be avoided.

38. Alongside a covenant an enforceable management agreement might be required for the offset. This might set out the actions the offset provider will take to generate biodiversity gains and the outcomes that are expected to be delivered.

39. The Law Commission has recently consulted on introducing a scheme of conservation covenants[5]. The Government will take account of the outcome of this consultation in reaching its view on how to take forward offsetting. However if covenants and management agreements are required it will be important to ensure they are robust so the offset delivers genuine gain. It may be necessary to have a mechanism to agree the covenants and management agreements and ensure they are of sufficient quality. This might require a body or individual to be responsible for certifying the gain the offset will create and enforcing the covenant. Options include:

- Suitably qualified independent assessors
- Planning authorities
- A national public body (e.g. Natural England)

40. In designing an offsetting scheme Government will need to consider how long offsets will need to be secured for. There may be a practical limit to the length of commitment land managers are prepared to make, and, with a changing climate, habitat created or restored now may not be sustainable in the longer-term.

41. In addition to conservation covenants an offset register may be required. This would prevent a single offset being used to provide compensation for multiple projects. The

[5] lawcommission.justice.gov.uk/areas/conservation-covenants.htm

Government will need to identify a suitable body to run the register when it implements its proposals. Options include:

- A public body with existing expertise in running registers (e.g. the Land Registry, the Environment Agency)
- A public body with suitable ecological expertise (e.g. Natural England)
- A private sector company could run the registry under a contract from Government

Question 21: Do you think conservation covenants should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing conservation covenants? If not, how else do you think offsets could be secured for the long-term?

Question 22: Do you think management agreements should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing management agreements?

Question 23: Do you think an offset register should be put in place as part of an offsetting system? If so, who do you think should be responsible for maintaining an offset register?

Question 24: How long should offsets be secured for?

Question 25: Are there any long-term factors, besides climate change, that should be taken into account when securing offsets?

5.9 Avoiding adverse effects on planning applications

42. Introducing changes to regulations can have unintended consequences. For example it may create uncertainty, causing developers to delay making applications. The Government does not want the introduction of an offsetting system to have such an impact. The Government would therefore look at the scope to backdate offsetting so that any applications under consideration would be able to make use of offsetting at the point it is introduced.

Question 26: Do you think biodiversity offsetting should be" backdated" so it can apply in relation to any planning applications under consideration at the point it is introduced?

6. Detailed considerations

43. Section 5 sets out some of the headline considerations for establishing an offsetting system. There are a number of more detailed choices on a series of issues that will have a large impact on how biodiversity offsetting works in practice. This section of the paper seeks your views on how Government might approach:

- Deciding whether harm is significant
- Securing offsets against provider failure
- What kind of habitat can be provided as an offset
- Using a strategic approach to achieve net gain
- Ensuring environmental benefits are additional
- Ensuring consistent application of the metric
- Including hedgerows in the metric

6.1 Deciding whether harm is significant

44. The National Planning Policy Framework states that if “significant harm to biodiversity resulting from a development proposal cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused”. Local planning authorities therefore need to consider whether any residual harm would be significant, depending on the circumstances of each case.

45. Government would need to consider how to reflect the framework’s policy on significant harm in any biodiversity offsetting system. One issue will be whether it is valid to take a national view of what is significant as this will vary depending on circumstances. Against this there may be greater certainty from taking a national approach. A further consideration could be the impacts on the costs and benefits of a biodiversity offsetting system. These would change depending on where the bar was set with a higher bar reducing the size of the market and vice versa. Potential approaches include:

- A **case-by-case** approach where it is left to planning authorities to decide what is significant with respect to individual planning applications.
- An approach **excluding low-distinctiveness, low-quality habitats** on the basis Government wants to incentivise development on these sites rather than ones of higher biodiversity value.
- A **threshold** approach where harm is only considered significant if more than a specified number of biodiversity units are lost. This would recognise that the loss of a large area of low value habitat can be significant and that the loss of a small area of high value habitat may not be. If this approach is taken a choice would need to made on the appropriate level for the threshold.

- A **hybrid approach** involving more than one of the approaches above e.g. above a threshold harm is always considered significant but below the threshold planning authorities take a case-by-case judgement.

Question 27: Do you think an offsetting system should take a national approach to the question of significant harm and if so how?

6.2 Securing offsets against provider failure

46. Offsets would need to be secured for the long-term, as biodiversity is assumed to be lost permanently once development has occurred. Taking account of the Law Commission's work, the Government is considering making conservation covenants part of an offsetting system as they would require the long-term management of the land irrespective of changes in ownership.

47. It may though be desirable to put in place additional mechanisms to secure offsets. Government would need to be satisfied that the additional security is needed and the costs of any mechanism put in place are proportionate to the benefit it creates. Additionally a mechanism should not create perverse incentives on offset providers, such as reducing their liability should they fail to undertake the activities required to create an offset. Options include the following.

- Offset providers could be required to put in place a **financial instrument** such as an annuity or trust fund that will provide a source of income to manage offsets in the long term. Wetland banking schemes in the United States take this approach and require bank owners to finance a trust fund with the proceeds from selling credits. The trust fund must be large enough that the wetland bank's management costs can be met from interest without touching the capital invested in the fund.
- The state could establish a **public sector trust fund** that would make payments to offset providers over the long term to meet management costs. This is the approach taken in New South Wales where part of the offset purchase fee is paid into BioBanking Trust Fund. The fund releases payments to the owners of the offset site as they undertake agreed activities to create the offset and maintain it in the long term.
- Offset providers could be required to pay into an **insurance pool**. The pool could be used to cover the risk that the owners of offset sites get into financial difficulty and fail to meet their obligation to create or maintain the offset site.

Question 28: Do you think any additional mechanisms need to be put in place to secure offsets beyond conservation covenants? If so why and what are they? If this includes measures not listed above, please explain what they are.

6.3 What kind of habitat can be provided as an offset

48. The offsetting metric allows the value of any type of habitat to be compared with another. For example the value of arable land can be compared to that of scrub or intertidal mudflats. Theoretically an offset could be provided by restoring or recreating any type of habitat as long as it generates the same number of units of environmental gain as would be lost.

49. It may not however be desirable to allow completely free trading of habitat types. The market may favour the creation of some habitat types over others, leading to an unintended change in the distribution of habitats. For example it might result in the replacement of high-distinctiveness habitats with larger areas of moderate-distinctiveness habitat. However greater constraints would need to be weighed against the impact on the market which could become more fragmented and costly. There would also be higher administration costs as offsets would have to be differentiated on the basis of the type of ecological gain they create. The Government will need to consider how to address this issue. This could include using some of the following options (which could be used in combination):

- A **free-trading** system which allows any type of habitat to be provided as an offset as long as it generates sufficient biodiversity units.
- Requiring offsets to provide **similar habitats**. For example if a wetland habitat such as a reed bed was lost, the offset might need to recreate or restore some other kind of wetland habitat such as grazing marsh as long as it was in the same distinctiveness bracket. In a more stringent version, offsets might have to be provided on a like-for-like basis (i.e. reed beds could only be offset with reed beds).
- A **hybrid option** where trading is restricted for habitats that are considered more distinctive under the metric. Under this model low-distinctiveness habitats might be able to be offset by any other type of habitat irrespective of its distinctiveness. For moderate and high-distinctiveness habitats offsets might have to be in the same or a higher distinctiveness band and be of the same broad habitat type. This is similar to approaches taken in Victoria in Australia where trading up is encouraged.
- A **penalty system** where developers have to secure a larger offset worth more biodiversity units if they want to provide a different type of offset (i.e. if a developer wants to offset 10 units of woodland loss they could provide 10 units of woodland gain or 15 units of grassland gain).

Question 29: Do you think there should be constraints on what habitat can be provided as an offset? If so what constraints do you think should be put in place, and how should they work in practice?

6.4 Creating net ecological gain

50. One of the attractions of an offsetting system is the opportunity to take a strategic approach to compensation that can achieve more for nature than a series of case-by-case decisions. In particular Government would want to use offsetting to help deliver the recommendations set out in Sir John Lawton's report *Making Space for Nature*[6] which said areas for nature needed to be bigger, higher in quality and number, and better connected. This cannot though come at the expense of unnecessary bureaucracy or happen in a way that would unnecessarily distort the market (e.g. if the strategy is too inflexible and the rewards for complying with the strategy are disproportionate).

51. There are two areas to think about when considering how to create net ecological gain. The first is how to set the strategy where there are at least three options:

- The strategy could be set **locally**. This is the approach taken in the pilots where each area has to put in place its own offsetting strategy. Under this option planning authorities could set out their approach to offsetting in their local plans, drawing on input from Local Nature Partnerships.
- A **national** strategy setting out priorities for England as a whole
- A **hybrid model** where headline priorities are set nationally with local discretion on how to implement the strategy in a given area.

52. The second issue is how to ensure compliance with the strategy where options include:

- A **prohibition model** where offsets could only be generated if they were consistent with the strategy (e.g. provided the right type of habitat in the right place).
- An **incentive model** where offsets which help fulfil the strategy are rewarded (e.g. by generating more biodiversity units) or vice versa. The offset pilots take a penalty approach whereby an offset must be three times larger to generate the same number of units if outside the offset strategy.
- An **enabling model** where support is given to encourage offsets that are consistent with the strategy. For example, giving advice to potential providers on how they can join up their offsets with existing protected or other providers' proposals to create an ecological network.

Question 30: Do you agree an offsetting system should apply a strategic approach to generate net ecological gain in line with *Making Space for Nature*? If so, at what level should the strategy be set and who by? How should the system ensure compliance with the strategy?

[6] archive.defra.gov.uk/environment/biodiversity/documents/201009space-for-nature.pdf

6.5 Ensuring environmental benefits are additional

53. Offsetting systems are designed to avoid net loss (and if possible lead to net gain). This will be undermined if offsets themselves do not lead to genuine environmental gain. While this is simple in concept applying the principle in practice can be more complicated.

54. One area that needs consideration is habitat banking. Under this approach an offset provider undertakes habitat restoration or recreation in advance of need in the anticipation they will be able to sell the gain as an offset at a later date. This can reduce risk for the provider and is a business model the Government wants to allow. However it is important the baseline is understood so the gain from habitat banking is properly quantified. In addition there is a case to require the intent to generate an offset to be shown. Otherwise offsetting may reward action that would have taken place anyway. Lastly, over time a habitat bank will become an established part of an ecological network whether or not it has been sold as an offset. At this point it might be considered part of the baseline of biodiversity and no longer represent an environmental gain. In such a situation it would not be acceptable to use unsold biodiversity units as offsets.

Question 31: Do you think habitat banking should be allowed? Do you think a provider must show intent to create a habitat bank to be allowed to sell it as an offset? Do you think habitat banks should be "retired" if they are not used to provide an offset? If so, after how long?

55. Another area to think about is whether maintaining a site in a good condition should qualify as an offset. An example might be where a farmer has been paid to generate an environmental gain through Higher Level Stewardship. At the end of the grant period that gain might be lost; but if it were secured in perpetuity this might be considered an environmental gain that could count as an offset. This is not allowed under the pilot metric but is allowed under some species banking systems in the United States and under state-level offsetting systems in Australia.

Question 32: Do you think maintaining an environmental gain that might otherwise be lost should count as an offset? If so, how should a value be attached to the offset?

56. Lastly some biodiversity may be created as an incidental benefit of another regulatory or planning requirement. For instance, this might be the case when a developer puts in place a sustainable urban drainage system (SUDS)[7] to reduce the risk of flooding and in doing so creates habitat with biodiversity value. Some would consider this biodiversity additional as there may have been other ways to fulfil the primary purpose of

[7] A sustainable urban drainage system is way of reducing the risk of surface water flooding. It can involve a variety of things such as putting in place permeable hard surfaces that allow rainwater to sink into the ground rather than run off. In some instances it may involve putting in place features to attenuate water flow such as ponds, ditches and gullies which can provide a biodiverse habitat.

the investment (i.e. flood prevention). If the biodiversity benefit is genuinely additional it would be legitimate to use the SUDS as an offset as well.

Question 33: Do you think it is acceptable or not to use biodiversity gain created for other purposes as an offset? If you do, how should it be decided what is allowed to be used as an offset?

6.6 Ensuring consistent application of the metric

57. An offsetting system will only achieve its environmental objectives if the underpinning metric is used robustly and consistently to calculate environmental losses and gains. Otherwise there is a risk the impacts of developments will be considered too small or the gains from an offset too large. It is therefore important to have a system in place that ensures the metric is used properly to assess both the impacts of development and the gain from offsets. However it cannot create unnecessary or expensive red tape.

58. The Government envisages that as a minimum it will put in place the detailed framework for an assessment. In doing so it would draw on the experience of other systems which have sought to take a formula-based approach. For example, Victoria has set out a methodology for measuring the quality of habitats based on a number of weighted factors each of which is assessed using a simple look-up guide (e.g. the quality of woodland takes account of canopy cover which can be assessed by seeing how much sky is visible at a number of locations on the site).

59. However, even with a simple methodology, there would still be a need to ensure the robustness of assessments. Options include:

- Individual **planning authorities** could be responsible for ensuring the robustness of assessments.
- A **national body** could have responsibility for undertaking the assessments.
- Suitably qualified individuals could become **accredited assessors**. This is the approach taken in Victoria and New South Wales and the Government is attracted to it in principle. If this route is followed, Government would need to consider who would have responsibility for issuing accreditation and maintaining standards and how costs would be met.

60. In addition Government needs to consider how differences of opinion over an assessment might be addressed, while reducing the risks of this becoming another source of delay in decision-making. Potential options might be:

- If an accredited assessor system is used a **second opinion** could be sought from another accredited assessor. A higher level of accreditation could be used that allow some individuals to arbitrate if this did not lead to an agreed opinion. An **appeal or tribunal mechanism** could be put in place that would provide a route to challenge the assessment.
- The **planning authority** decides, perhaps having appointed its own expert.

Question 34: How do you think the quality of assessments should be assured and who by?

Question 35: How should differences of opinion over assessments be addressed?

6.7 Including hedgerows in the metric

61. The metric being used in the pilots has a particular set of rules around hedgerows: where hedgerows are lost another hedgerow must be created. The length of the new hedgerow depends on the quality of the one that is lost. Low quality hedgerows have to be replaced with the same length, moderate quality ones with twice the length and high quality ones with three times the length.

62. Hedgerows were included in the metric due to their high-value in the English landscape, particularly as a feature that can help connect wider areas of biodiversity interest. For this reason, the metric does not allow hedgerows to be traded for other types of habitat. The Government would welcome views on whether and how hedgerows should be included in a future metric.

Question 36: Do you think the metric should take account of hedgerows? If so do you think the current approach is the right one or should it be adjusted?

Question 37: Do you think it should be possible to offset the loss of hedgerows by creating or restoring another form of habitat?

7. Implementing biodiversity offsetting

63. The Government does not want to delay the introduction of biodiversity offsetting if it can deliver more for the economy and the environment. Following this consultation the Government will therefore develop its detailed proposals for using biodiversity offsetting and plans to set these out by the end of 2013.

64. If the power to create covenants binding on successors is adopted as the method to secure offsets in the long term primary legislation will be required. It is likely legislation would also be needed to integrate biodiversity offsetting with the planning system.

65. Much of the rest of the system could be put in place through planning guidance. However, greater certainty may be provided for developers, planning authorities and potential suppliers of offsets, if key parts of a new offsetting regime were backed by legislation, including a power to provide statutory guidance. Experience in other countries also suggests that as the system is introduced, there will probably be a need for aspects of the regime to evolve in the light of experience. This would be easier under secondary legislation and statutory guidance.

66. A number of other powers may therefore need to be introduced in primary legislation at the same time as conservation covenants. This could include giving the Secretary of State powers to specify:

- The national metric that is to be used for determining offsets
- Any thresholds for where that metric is to be applied
- How developers and planning authorities are to determine the residual impact of development on biodiversity and offset that impact
- How public registers of offsets are to be kept
- How and by whom the metric will need to be applied and how disputes concerning its use might be resolved

67. There may also may be a need for amendment to existing primary legislation e.g. to existing conditions concerning biodiversity (e.g. section 40 Natural Environment and Rural Communities Act 2006), either to take account of offsets, or to enable ministers to provide guidance or directions as to how offsets apply under that legislation.

Question 38: If conservation covenants are put in place, do you think providing for offsetting through planning guidance will be sufficient to achieve national consistency? If not, what legislative provision may be necessary?

8. Responding to this consultation

68. This consultation will be open for 9 weeks. The deadline for responses is 7 November 2013.

8.1 How to respond

69. You can respond in one of three ways.

- Online: by completing the questionnaire at consult.defra.gov.uk
- Email: bio.offsets@defra.gsi.gov.uk
- Post: Biodiversity offsetting, 1/16 Temple Quay House, Bristol, BS1 6ED

70. The preferred method is online because it is the fastest and most cost-effective way for to collate, analyse and summarise responses. If you require a different format please contact Defra through one of the routes set out above.

71. In addition a number of workshops will take place during the consultation period that will provide an opportunity to explore in detail the questions set out in this consultation. Workshops will take place at locations around England. If you would be interested in attending a workshop please provide your contact details via: bio.offsets@defra.gsi.gov.uk. Details of the workshops will also be published at: www.gov.uk/biodiversity-offsetting.

8.2 After the consultation

72. Every response will be read and considered by the policy team in Defra taking forward work on biodiversity offsetting.

73. A summary of responses will be published alongside the Government's detailed proposals. This will not describe every response in detail.

8.3 Confidentiality

74. The summary will NOT include your personal name (unless you have asked us to include it) or other personal data such as contact details. The summary may contain the name of your organisation, if you are responding on an organisation's behalf.

75. Defra will retain copies of responses for a suitable length of time. Please note that a member of the public can ask to see copies of information held. If you need to keep any part of your response confidential, please tell us when you respond. Please note that confidentiality disclaimers automatically added to e-mails do not count.

76. IMPORTANT: We will take your reasons into account if someone asks for information. Because we must comply with the law, including Freedom of Information legislation, we cannot promise that we will always be able to keep details that you provide to us confidential.

8.4 To ask us a question or to access responses

77. The consultation summary will be published online and will be accessible from consult.defra.gov.uk and www.gov.uk/defra. If you require a hard copy, or would like more information, please contact us by email or by post using the details above.

78. Additionally, you can contact the Defra Helpline which has a telephone and textphone service available.

- Telephone (UK only) 08459 33 55 77
- Telephone (from outside the UK) +44 20 7238 6951
- Textphone 0845 300 1998

79. Please note that consultation summaries and copies of responses are normally published within 12 weeks of a consultation closing.

8.5 To make a comment or complaint about the consultation

80. If you have a comment or complaint about the consultation process, please write to the Defra Consultation Co-ordinator.

- By email: consultation.coordinator@defra.gsi.gov.uk.
- By post: Room 629, 9 Millbank, c/o 17 Smith Square, London, SW1P 3JR.

8.6 Compliance with Consultation Principles

81. This consultation is in line with the Coalition Government's Consultation Principles.

82. More information on the Coalition Government's Consultation Principles can be found at: www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance