



Department  
for Environment  
Food & Rural Affairs

# Consultation on Biodiversity Net Gain Regulations and Implementation

January 2022

We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy, sustaining thriving rural communities and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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## How to respond

Consultation questions are included in Parts 1, 2 and 3 of this document.

Please respond by 5<sup>th</sup> April 2022.

Please respond through the online survey (Citizen Space) accessible via GOV.UK.

Responses can also be sent by email to [netgainconsultation@defra.gov.uk](mailto:netgainconsultation@defra.gov.uk) or by post, specifying which questions you are responding to:

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This consultation is in line with the UK Government's [Consultation Principles](#). This can be found on GOV.UK.

Representative groups are asked to give a summary of the people and organisations they represent and where relevant who else they have consulted in reaching their conclusions when they respond.

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# Introduction

## What is biodiversity net gain?

Biodiversity net gain 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.

Mandating biodiversity net gain through the Environment Act 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 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.

| What we are already doing?   |  | What will mandatory biodiversity net gain add?   |   |
|--|--|--|---|
| Protected by current legislation and planning policy:  |  | Protected by current legislation and planning policy:  |   |
| <ul style="list-style-type: none"> <li>✓ Statutory protected sites</li> <li>✓ Protected and important species</li> <li>✓ Irreplaceable habitats</li> </ul> |  | <ul style="list-style-type: none"> <li>✓ Statutory protected sites</li> <li>✓ Protected and important species</li> <li>✓ Irreplaceable habitats</li> </ul> |   |
| <b>X</b>   | Important habitats, such as native woodland, are afforded protection through planning policy only. Sometimes compensation is provided for their loss, depending on case circumstances and local planning policy. | <b>✓</b>   | Important habitats, such as native woodland, are afforded protection through planning policy and biodiversity net gain. Losses of important habitats must be compensated with creation or enhancement of the same habitat type. |
| <b>X</b>   | Other habitats, such as scrub, may be recognised in local planning policy. They are sometimes, but often not, subject to compensation requirements.  | <b>✓</b>   | Other habitats, such as scrub, will have their biodiversity value recognised, encouraging the avoidance of impacts and meaning losses must be compensated.  |

**Figure 1: What mandatory biodiversity net gain adds to existing legislation and planning policy**

## What are we consulting on?

We are consulting on the practical and legal implementation details of the new biodiversity net gain requirement for development. Targeted stakeholder engagement will take place during and after this 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 biodiversity net gain. It is important to note that the biodiversity net gain plan template included in Annex B is a draft and will be subject to further testing with stakeholders before a final version is published.

Consultation questions are split into three parts, each of which covers several themes:

- 1) defining the scope of the biodiversity net gain requirement for Town and Country Planning Act 1990 development
  - exemptions
  - development within statutory designated sites for nature conservation
  - irreplaceable habitat
- 2) applying the biodiversity gain objective to different types of development
  - phased development and development subject to subsequent applications
  - small sites
  - Nationally Significant Infrastructure Projects (NSIPs)
- 3) how the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 development
  - biodiversity gain plan
  - off-site biodiversity gains
  - the market for biodiversity units
  - habitat banking
  - the biodiversity gain site register
  - additionality
  - statutory biodiversity credits
  - reporting, evaluation, and monitoring

## Background

The UK Government is committed to improving the environment, benefitting local communities, and delivering sustainable development. The [25 Year Environment Plan](#) sets



out how the UK Government intends to deliver its promise to leave the environment in a better state than we inherited it.

In 2018, we consulted on making biodiversity net gain mandatory for new development<sup>1</sup> through the planning system. The responses indicated broad support for our proposals and the UK Government included provisions for mandatory biodiversity net gain in the Environment Act<sup>2</sup>. 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<sup>3,4</sup>. The Act sets out the framework for biodiversity net gain requirements whilst leaving some detail to be provided through secondary legislation, policy, and guidance. The Environment Act's biodiversity net gain provisions apply:

- for 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
- for 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

Both requirements are subject to separate transition arrangements which are discussed in this consultation. This consultation aims to test our proposals to ensure the final legislation is robust and provides the clarity needed to transition to a biodiversity net positive planning system. We will work with planning authorities throughout the transition period to assess how biodiversity net gain is working in practice and what early refinements can be made to the approach introduced by the Environment Act.

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<sup>1</sup> Defra (2018) Net gain consultation proposals [https://consult.defra.gov.uk/land-use/net-gain/supporting\\_documents/netgainconsultationdocument.pdf](https://consult.defra.gov.uk/land-use/net-gain/supporting_documents/netgainconsultationdocument.pdf)

<sup>2</sup> Defra (2019) Net gain summary of responses and UK Government response [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819823/net-gain-consult-sum-resp.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819823/net-gain-consult-sum-resp.pdf)

<sup>3</sup> Efttec (2021) *Biodiversity Net Gain: Market Analysis Study*, NR0171 [www.randd.defra.gov.uk](http://www.randd.defra.gov.uk)

<sup>4</sup> This included demand from all types of development, including Nationally Significant Infrastructure Projects (NSIPs), and was based on assumptions of 50% on-site delivery by developers, and a unit price of £20,000 to £25,000.

Our proposals apply to development in England only; where the legislation means that the requirement would apply to development, or components of projects, outside of England we intend to exempt these through regulations.

## Why are we consulting?

Mandatory biodiversity net gain policy and processes will fundamentally change the way that habitat losses are considered as part of development. This will affect most substantive development in England, so it is vital that we get the approach right to improve environmental outcomes and improve certainty to make the process less burdensome for development.

We know that there is uncertainty in practice about what biodiversity net gain means and that the term is currently sometimes used in a way that is inconsistent with how it was defined in the previous Defra consultation. Our proposals will mean that biodiversity net gain has a specific and robust meaning, removing the scope for improper use of the term and the ambiguity this causes for ecologists, communities, and developers alike.

Responses to this consultation will shape the secondary legislation, policy and delivery plans which will translate the Environment Act's aims into real gains for our environment, society, and industry.

## The context for biodiversity net gain

### What do we want to achieve with biodiversity net gain policy?

We proposed a number of policy objectives in our 2018 consultation and set out our view for how these could be realised. These objectives were:

- secure positive outcomes for biodiversity,
- improve the process for developers, and
- create better places for local communities

These aims were broadly supported in our first consultation and remain the UK Government's core targets for biodiversity net gain policy.

### What other changes should be considered alongside the proposals in this consultation?

Mandatory biodiversity net gain is not the only policy being developed to meet the ambitions set out in the 25 Year Environment Plan. We recognise that it may be helpful to consider wider policy proposals and planning reforms before responding to questions on

biodiversity net gain. The most relevant of these policies are outlined below and described in more detail, with links to relevant documents, in Annex A. They include:

- conservation covenants
- Environmental Land Management Schemes
- Environmental Net Gain
- Local Nature Recovery Strategies
- Nature Recovery Network
- species abundance target
- species conservation strategies and protected site strategies
- strengthened biodiversity duty
- planning reforms

## **Marine net gain**

The requirements for biodiversity net gain will apply to development projects, or components of projects, as far as the low-water mark, including the intertidal zone. Projects, or components of projects, in the marine environment beyond the intertidal zone are not included within the scope of the mandatory requirements for biodiversity net gain.

The Environment Act does, however, provide options for introducing such a requirement for Nationally Significant Infrastructure Projects when a suitable approach has been developed and consulted upon. We are currently working with a wide range of stakeholders towards a consultation on the principles for marine net gain early this year.

## **Overview of the proposed biodiversity net gain processes**

There are two types of development to which we will apply biodiversity net gain:

- development for which planning permission is granted (or deemed to be granted) under the Town and Country Planning Act (TCPA) 1990
- Nationally Significant Infrastructure Projects (NSIPs) consented under the Planning Act 2008

## **For development for which planning permission is granted under the Town and Country Planning Act 1990**

This section is relevant to those delivering or evaluating development proposals that require planning permission under the Town and Country Planning Act 1990 unless the biodiversity net gain condition does not apply<sup>5</sup>. This is typically development for which a planning application is made to a planning authority and will include most residential and commercial development and some (non-Nationally Significant Infrastructure Project) infrastructure development.

There are several routes to the grant of planning permission. The most common route follows an application for planning permission in accordance with the provisions of a development order made under section 59 of the Town and Country Planning Act 1990 (Development Management Procedure (England) Order 2015 is the key such development order). Other routes in respect of which the condition will apply include permission granted by a Local or Neighbourhood Development Order. Further detail will be worked up for implementation in respect of other routes to permission.

### **What is the requirement?**

The mandatory requirement is to achieve at least a 10% biodiversity net gain increase from the pre-development biodiversity value. The requirement is framed as a pre-commencement condition, meaning that the biodiversity gain condition must be discharged before development can begin.

To discharge the condition, the planning authority must approve the development's biodiversity gain plan. This biodiversity gain plan approval must take place before development starts. However, we propose to require applicants for planning permission to include biodiversity gain information with their application. This core information will include:

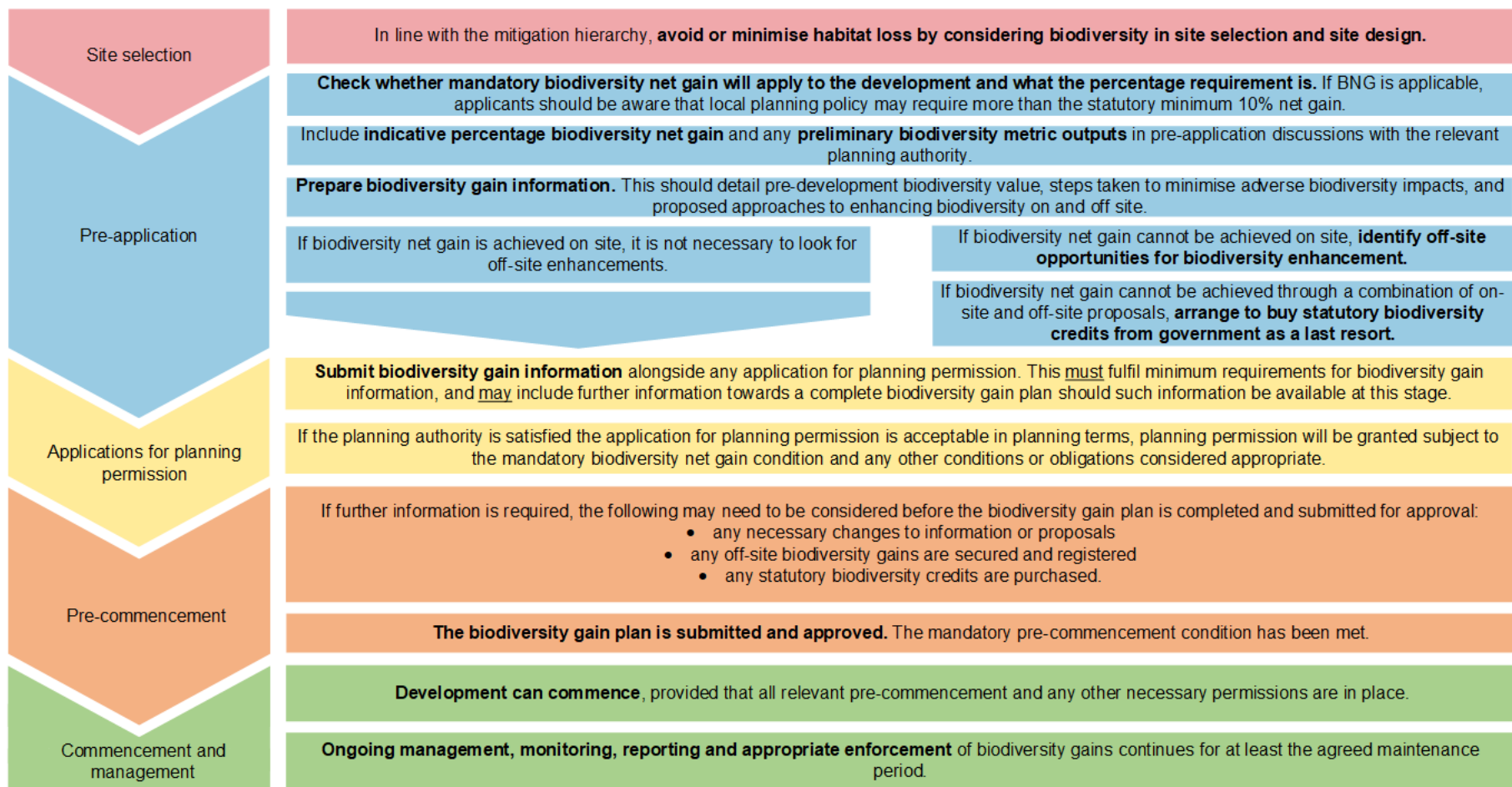
- the pre-development biodiversity value,
- the proposed approach to enhancing biodiversity on-site, and
- any proposed off-site biodiversity enhancements (including the use of statutory credits) that have been planned or arranged for the development

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<sup>5</sup> The condition does not apply to development for which planning permission is granted by a development order, urgent Crown development, or development specified in Regulations (paragraph 17 of Schedule 7A to the Town and Country Planning Act 1990).

This biodiversity gain information can help aid decision-making by providing planning authorities, and consultees, with an understanding of how proposed development intends to meet the biodiversity gain objective.

**Proposed biodiversity net gain process for Town and Country Planning Act 1990 development (indicative process only – not representative of all routes to permission)**



**Figure 2: Summary process diagram for proposals as they would apply to Town and Country Planning Act 1990 development**

## **How does it relate to existing environmental planning policies?**

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.

Compliance with a number of other environmental planning policies will still need to be demonstrated by the developer; these include requirements relating to:

- protected or important sites
- protected or important species
- irreplaceable habitats

The mandatory biodiversity net gain process is additional to existing requirements for Environmental Impact Assessment, Strategic Environmental Assessment, and Habitat Regulations Assessment. There are opportunities to align reporting so that efforts are not duplicated. Further opportunities to align the delivery of net gain with wider requirements are discussed in part 3 (additionality).

## **When will it apply?**

It is our intention that mandatory biodiversity net gain for development requiring planning permission under the Town and Country Planning 1990 will commence for new applications 2 years after royal assent of the Environment Act, which was achieved in November 2021. The National Planning Policy Framework already encourages net gains for biodiversity when drawing up plan policies and making planning decisions.

## **How will it be achieved?**

Mandatory biodiversity net gain will be implemented through the planning system.

Developers will be required to demonstrate that they will deliver a minimum 10% net gain of biodiversity units for area-based habitats and any relevant linear habitats (hedgerows, lines of trees, and watercourses). Prior to the commencement of a development, a biodiversity gain plan must be submitted to the relevant planning authority for approval.

We maintain the view that 10% strikes the right balance between the UK Government's ambition for development and the pressing need to reverse environmental decline. The 10% will be a mandatory requirement but should not be viewed as a cap on the aspirations of developers that want to voluntarily go further or do so in the course of designing proposals to meet other local planning policies.

The biodiversity gains and losses of a development will be measured in ‘biodiversity units’, using a metric which uses habitats as a proxy for biodiversity and calculates units by taking account of the type, extent and condition of habitats. Natural England has recently published biodiversity metric 3<sup>6</sup> which, subject to further consultation<sup>7</sup> and any further updates, is expected to be the metric specified for mandatory biodiversity net gain.

Biodiversity net gain complements and works with the biodiversity mitigation hierarchy<sup>8</sup> set out in the [National Planning Policy Framework paragraph 180a](#). To achieve net gain in a way that is consistent with the mitigation hierarchy (see Figure 3) and reflecting the ‘spatial hierarchy’ preference for local enhancements, developers should follow these steps in order:

1. aim to avoid or reduce biodiversity impacts through site selection and layout
2. enhance and restore biodiversity on-site
3. create or enhance off-site habitats, either on their own land or by purchasing biodiversity units on the market, and
4. as a last resort to prevent undue delays, purchase statutory biodiversity credits from the UK Government where they can demonstrate that they are unable to achieve biodiversity net gain through the available on-site and off-site options

Developers will set out on-site and off-site measures in a ‘biodiversity gain plan’. We intend to align this plan submission process with the digitisation of the planning system when this is possible.

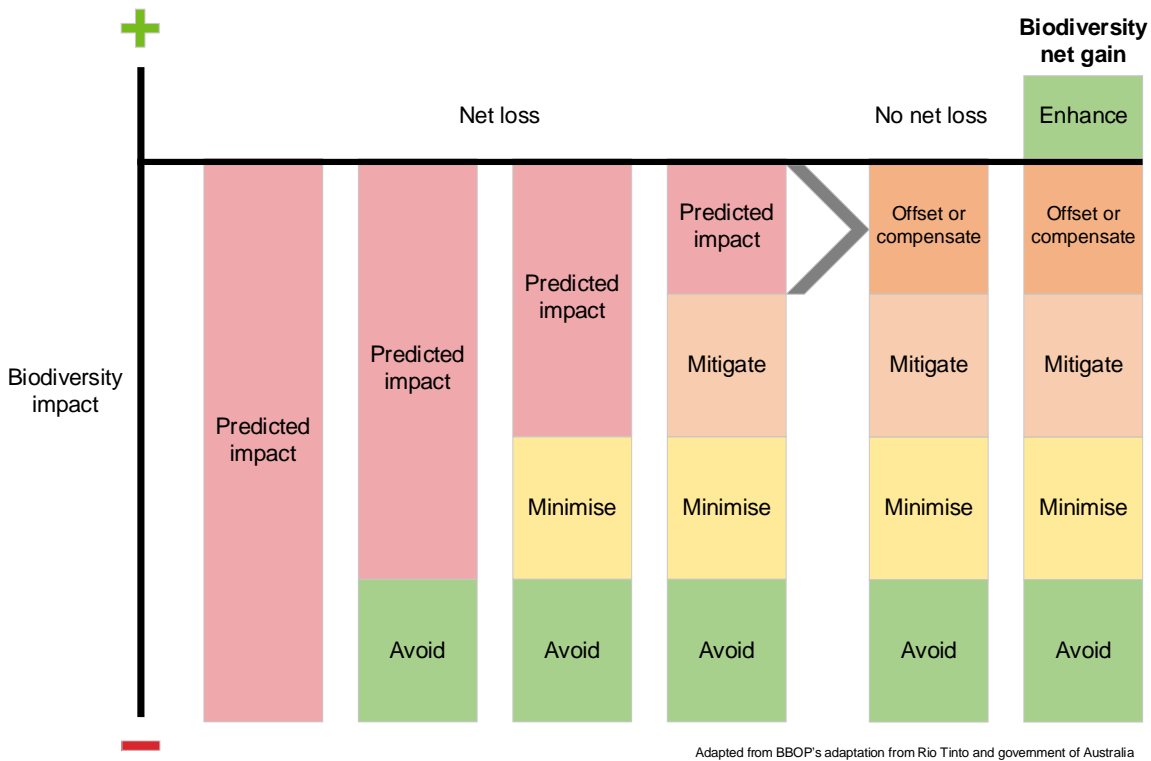
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<sup>6</sup> Natural England (July 2021) Biodiversity Metric 3.0 <https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>

<sup>7</sup> The consultation will seek views on the metric to be formally published for use in mandatory biodiversity net gain, our proposals for the timeline of future updates, and the purpose and content of these future updates.

<sup>8</sup> The principle that environmental harm resulting from a development should be avoided (through locating development where there will be less harmful impacts), adequately mitigated, or, as a last resort, compensated for.





**Figure 3: How biodiversity net gain should apply in line with the mitigation hierarchy**

**How will we ensure practitioners and planning authorities are ready for mandatory biodiversity net gain?**

The UK Government published a biodiversity net gain impact assessment in 2019 which outlined our analysis of the costs and benefits<sup>9</sup>. This recognised that implementing mandatory biodiversity net gain will place additional demands on local authority resources. The UK Government has committed to fully fund new burdens placed upon planning authorities arising from the new mandatory biodiversity net gain requirement.

Our skills and capacity assumptions were reviewed through a survey<sup>10</sup> of planning authorities in 2021. We anticipate that the final survey report will be published early this

<sup>9</sup> Defra (2019) Impact Assessment: biodiversity net gain and local nature recovery strategies [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/839610/net-gain-ia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839610/net-gain-ia.pdf)

<sup>10</sup> This was undertaken by the Association of Local Government Ecologists and the Association of Directors of Environment, Economy, Planning & Transport on behalf of Defra.

year. We are currently working with a number of planning authorities on the specifics of how the funding mechanism will work and have also commissioned a multi-year guidance project delivered by the Planning Advisory Service.

## **For Planning Act development (Nationally Significant Infrastructure Projects (NSIPs)) consented under the Planning Act 2008**

Only Part 2 of this consultation relates directly to NSIPs, but much of parts 1 and 3 will also be relevant to NSIPs because we intend to apply similar approaches. If you are responding for NSIPs only, please also respond to sections 1 and 3 and raise any relevant considerations.

### **What is the requirement?**

The Environment Act establishes a biodiversity gain objective for Nationally Significant Infrastructure Projects. Where an application is made for development consent for a NSIP, the relevant Secretary of State may not grant the application unless satisfied that the biodiversity gain objective has been met. Figure 4 in Part 2 of this consultation sets out our proposed process in more detail.

### **When will it apply?**

The UK Government intends to apply the requirement no later than 2025. However, we want to use this consultation to test whether this provides the right length of time for projects in the pipeline to transition to the new approach.

### **How will it be achieved?**

We propose applying a similar approach to net gain for Nationally Significant Infrastructure Projects as is proposed for other kinds of development.

However, it is important to consider whether elements of the approach will need to be tailored to maintain compatibility with the Planning Act 2008 regime. We are using this consultation to seek views on a number of areas, including:

- the scope, percentage gain, and exemptions of the requirement,
- processes for setting policy, transition arrangements and demonstrating gains, and
- compulsory acquisition of land

Following this consultation, the UK Government will consult again on the full draft approach (biodiversity gain statements) for Nationally Significant Infrastructure Projects.

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

In implementing the requirement for biodiversity net gain, we need to strike a balance between making it suitable for a wide range of developments to address the cumulative small losses in habitat that are contributing to wildlife declines, but also robust enough to make sure that the losses are properly addressed.

We also know it is not appropriate to rely on biodiversity net gain when considering negative impacts on irreplaceable habitats.

## Exemptions

### Background

The UK Government will not introduce broad exemptions from delivering biodiversity net gain, beyond those exemptions already proposed for permitted development and householder applications such as extensions. The UK Government will instead introduce exemptions for the most constrained types of development which do not result in substantive habitat losses.

The Town and Country Planning Act 1990 as amended by the Environment Act<sup>11</sup>:

- i. exempts permission granted by a development order under section 59 (known as permitted development)<sup>12</sup> and Urgent Crown Development<sup>13</sup>
- ii. allows modification of the requirement for phased development and development permitted following modification of planning permission under section 97 (see Part 2 of this consultation)
- iii. allows modification or exemption of the requirement for development already carried out (section 73A) or for development pursuant to discontinuance orders (section 102)
- iv. allows for application of the requirement to permission granted under sections 141 or 177(1)<sup>14</sup>
- v. provides a power to exempt other types of development from the net gain condition. These further exemptions would be set out in secondary legislation

Any exemption from mandatory biodiversity net gain would not prevent planning authorities requiring biodiversity gains to be delivered by exempted developments in line with local or nationally set planning policy. As the UK Government has previously stated, HS2's development will not be subject to the Environment Act's biodiversity net gain requirement because adding processes at this advanced stage of design maturity would cause significant delays and cost. However, the UK Government has now made a policy commitment to aim to deliver a net gain in biodiversity on the next phase of HS2<sup>15</sup>.

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<sup>11</sup> In this paragraph, references to sections are to the relevant sections in the Town and Country Planning Act 1990

<sup>12</sup> Permitted development rights are a national grant of planning permission which allow certain building works and changes of use to be carried out without having to make a planning application. Permitted development rights are subject to conditions and limitations to control impacts and to protect local amenity. This exemption includes prior approval permitted development. For more information see: <https://www.gov.uk/guidance/when-is-permission-required>

<sup>13</sup> There is a special procedure to speed up the process for determining a planning application where there is an urgent need for the Crown to undertake a particular development. For more information see: <https://www.gov.uk/guidance/crown-development>

<sup>14</sup> These refer to permission granted on appeal against enforcement notices and in relation to purchase notices.

<sup>15</sup> [Government commits to 'nature-positive' future in response to Dasgupta review - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/government-commits-to-nature-positive-future-in-response-to-dasgupta-review)

## Proposals

We are proposing to make the following exemptions using our regulation-making powers<sup>16</sup>:

1. developments impacting habitat areas below a 'de minimis' (minimal) threshold
2. householder applications
3. change of use applications

We are also considering whether to make exemptions for the following:

4. creation of biodiversity gain sites
5. self-build and custom housebuilding

And we are proposing to not apply the following exemptions, some of which were discussed in the previous net gain consultation:

6. brownfield sites which meet set criteria
7. temporary permissions
8. developments for which permitted development rights are not applicable due to their location in conservation areas or national park

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

#### **Proposal**

Exempt development proposals which result in negligible impacts or minimal impacts to low or medium distinctiveness habitats<sup>17</sup>.

It should also be noted that there will, in practice, be an exemption from having to undertake habitat enhancements where the baseline biodiversity score is zero according to the biodiversity metric (for example, development wholly on hardstanding or sealed surfaces, or redevelopment of existing buildings and structures with no impacts on

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<sup>16</sup> Exemptions relating to the Nationally Significant Infrastructure Projects biodiversity net gain requirement are considered separately in Part 2 of this consultation.

<sup>17</sup> Habitat types are defined and assigned distinctiveness scores in biodiversity metric 3. In general terms, low distinctiveness habitats tend to include habitats such as agriculturally productive land and amenity grassland. Medium distinctiveness habitats include those which are of moderate biodiversity value such as some types of scrub and grassland.

adjacent habitat). This is separate from the de minimis exemption which will set a threshold below which impacts to habitats (areas of vegetation or bare earth) are exempt from the biodiversity net gain requirement.

We recognise that some small-scale developments, such as street furniture and boundary walls, require applications for planning permission but have a negligible or minimal impact on habitats. Applying the requirement to these would be disproportionate and result in limited environmental benefits.

The following definitions and clarifications apply:

- the de minimis threshold will apply to the sum of all habitat types within a development site, not the size of the development site as a whole. Habitat in this context means areas of vegetation or bare earth, and does not include sealed surfaces such as concrete, asphalt or existing structures
- the de minimis threshold will apply to development which impacts low and / or medium distinctiveness habitats only. If a development results in any impacts to priority habitat (high or very high distinctiveness habitat in biodiversity metric 3), there would be no exemption from the mandatory requirement

This will help to ensure that the biodiversity net gain requirement is proportionate. A high threshold might create a risk of incentivising habitat degradation on sites above the threshold to bring the habitat area below the relevant area or invoke the range of potential issues (e.g. manipulation of habitat area through boundary definitions or previous development) that contributed to the decision in 2019 to keep minor development in scope of mandatory 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]

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

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

## Householder applications<sup>18</sup>

### Proposal

Exempt householder applications from the mandatory biodiversity net gain requirement.

The UK Government's response to the 2018 net gain consultation confirmed our commitment to an exemption for householder applications. The UK Government does not consider it proportionate to apply the mandatory biodiversity net gain requirement to 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]

## Change of use applications<sup>19</sup>

### Proposal

Exempt change of use applications from the mandatory biodiversity net gain requirement.

A typical change of use application would not propose physical changes that would result in habitat losses. It therefore seems appropriate to exempt these types of permissions.

We are, however, interested to hear whether there are change of use applications that could have a significant impact on biodiversity and how these might be defined.

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<sup>18</sup> Householder planning applications are used for proposals to alter or enlarge a single house, including works within the boundary and garden of a house (see article 2 of the Town and Country Planning (Development Management Procedure) (England) Order 2015).

<sup>19</sup> A change of use of land or buildings requires planning permission if it constitutes a material change of use. There is no statutory definition of 'material change of use'; it is linked to the significance of a change and the resulting impact on the use of land and buildings.

### 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]

## Creation of biodiversity gain sites

### Proposal

We are considering whether or not to make an exemption for projects which enhance biodiversity for the purpose of discharging the mandatory net gain condition. Responses to this consultation and ongoing stakeholder engagement will help inform our final policy position.

Where an off-site biodiversity gain proposal itself requires planning permission, the enhancement (such as wetland or pond creation) may require its own planning permission and 10% net gain. This would effectively decrease the biodiversity gains created and may make such projects less attractive. This could be prevented by exempting these projects or applying a 0% biodiversity net gain (no net loss) requirement to them.

To avoid creating a loophole that could be exploited by general development delivering biodiversity net gains, we propose that the exemption would apply to projects which only enhance biodiversity for the purpose of net gain. We are considering the option of extending this for a small range of other environmental impact mitigation purposes.

### 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]

## Self-builds and custom housebuilding

### Proposal

We are considering whether or not to make an exemption for self-builds and custom housebuilding. Responses to this consultation and ongoing stakeholder engagement will help inform our final policy position.

The UK Government does not see a clear need for an exemption for self-builds and custom housebuilding because these developments are often particularly ambitious in



wider sustainability terms (such as climate change mitigation), and many of these developments will be small in scale so may be subject to other exemptions and process easements. However, Government exempts self-build development from the Community Infrastructure Levy, recognising that this sector typically has a lower impact than volume housebuilding and is more cost sensitive.

As is the case for other types of development, we envisage that net gain costs for self-build should be passed into land prices rather than adding to build costs. We do not want to inadvertently exempt large developments in scenarios where these comprise custom-build plots.

Any decision not to exempt individual self-build sites would require the UK Government to be satisfied that the requirement can be applied to custom build projects in a way that is not inherently more difficult than for other sites and that complements wider sustainability efforts in this sector. We are interested in any evidence that suggests biodiversity net gain could present a barrier for self-build development or any suggestions for making the process simpler for these sites.

### 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]

## Brownfield sites<sup>20</sup>

### Proposal

Not to exempt brownfield sites from the mandatory biodiversity net gain requirement.

We have previously considered an exemption for development on some brownfield sites, in line with the preference in planning policy for re-using land that has been previously

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<sup>20</sup> Brownfield sites (also referred to as 'previously developed land') are areas which are or were occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

developed (brownfield land), provided that it is not of high environmental value. As part of this consideration, we proposed defining an exemption for brownfield sites of low biodiversity value, brownfield sites which have limited undeveloped curtilage, and brownfield sites which fall below a viability threshold.

We have decided, however, that an exemption based on an appropriate combination of these criteria would deliver little added benefit and would greatly complicate the requirement's scope for developers and planning authorities alike.

Furthermore, many brownfield sites offer significant potential for achieving biodiversity net gain as they often have a low pre-development biodiversity value. Brownfield sites with high biodiversity value would be unlikely to be exempted under any criteria set for a partial exemption.

The inclusion of brownfield sites, typically found in urban or suburban environments, in the requirement supports our intention for biodiversity net gain to benefit people as well as wildlife.

Brownfield developments only involving the redevelopment of buildings and structure on hardstanding or sealed surfaces will be automatically exempt from the biodiversity net gain requirement, as discussed above. Brownfield developments only impacting minimal areas or lengths of habitat will be subject to the de minimis exemption.

### 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]

## Temporary permissions

### Proposal

Not to exempt development granted a temporary planning permission for a limited period<sup>21</sup>.

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<sup>21</sup> Under section 72 of the Town and Country Planning Act 1990 planning permission may be granted for a limited period conditional on the removal of any buildings or works authorised by the permission, or the discontinuance of any use of land so authorised and the carrying out of any works required for the reinstatement of land at the end of that period.

It would be disproportionate to mandate biodiversity gains for short-term impacts to habitats which may be restored quickly. The biodiversity metric allows for temporary losses to be disregarded when the original baseline habitat will be restored to the same or better condition within 2 years of the loss.

Because the biodiversity metric effectively removes short-term impacts from the net gain requirement, and longer temporary permissions might cause significant negative impacts on biodiversity, we do not intend to make an exemption in the regulations for 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]

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

### **Proposal**

Not exempt from the mandatory biodiversity net gain requirement.

This exemption has been raised by stakeholder groups with respect to fairness across developments outside and within protected landscapes, where some permitted development rights do not apply.

It is likely that such developments will be small scale and so may usually take advantage of other exemptions and process easements, such as the small sites metric. We therefore consider it unnecessary to make a specific exemption for such development. This will also help to maintain high standards for protection of biodiversity in national parks and conservation areas.

### 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]

## 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]

## Development within statutory designated sites for nature conservation

### Background

Protected sites are afforded a high level of protection in law and planning policy. These provisions ensure that development is delivered sustainably and any impacts on protected sites are avoided, mitigated or, as a last resort, compensated.

Some environmental stakeholders have questioned whether the biodiversity net gain requirement will apply to development occurring within the boundaries of statutory designated sites such as Sites of Special Scientific Interest, Special Areas of Conservation, Special Protection Areas and Marine Conservation Zones.

Whilst it is generally agreed in practice that development should not publicly claim biodiversity net gain for a project which results in land take from statutory protected sites, development on such sites is not specifically exempted from the net gain requirement. Biodiversity metric 3 does not address impacts on species, recognise the significance of site designations, or take account of indirect impacts, cumulative impacts or in-combination impacts. In recognition of these limitations, the biodiversity net gain requirement for development on such sites is deemed not sufficient alone to guarantee positive outcomes. The biodiversity net gain requirement is therefore additional to any existing legal or policy requirements for statutory protected areas and their features, including restoration and conservation of designated features and the achievement of favourable conservation status and favourable condition. These requirements will need to be dealt with separately by the developer and planning authority.

## Proposals

We do not intend to exempt development within statutory designated sites for nature conservation from the mandatory biodiversity net gain requirement.

The biodiversity net gain requirement will be separate and additional to any existing legal or policy requirements<sup>22</sup>. This means it will be important to make a distinction between any biodiversity gain objectives and separate statutory designated site obligations in law and policy to ensure development is legally sound.

Achieving biodiversity net gains should not be seen, or claimed, as a justification for otherwise unacceptable development on statutory designated sites.

We think there are advantages to applying biodiversity net gain as an additional requirement for development on these sites. In many cases, development impacts on protected sites may only need to secure a 'no net loss' outcome to discharge the protected sites legal obligations. Accordingly, given that our network of protected sites are our best examples for nature and provide many important ecosystem services, it does not seem appropriate to exempt them from the biodiversity net gain requirement. Discharging the biodiversity net gain requirement in such cases could for example be used to improve site connectivity.

The explanatory notes of the Environment Act provide further detail on the interaction between the biodiversity gain condition and wider biodiversity protections<sup>23</sup>.

### Question 10

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

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

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<sup>22</sup> This is, in part, because net gain legislation is distinct from the legislation that governs statutory designated sites. See 'Part 2: Condition of planning permission relating to biodiversity gain' in the Environment Act's explanatory notes for the biodiversity net gain provisions for further detail.

<sup>23</sup> See paragraph 1751 of the Environment Act's explanatory notes  
[https://www.legislation.gov.uk/ukpga/2021/30/pdfs/ukpgaen\\_20210030\\_en.pdf](https://www.legislation.gov.uk/ukpga/2021/30/pdfs/ukpgaen_20210030_en.pdf)

# Irreplaceable habitat

## Background

Irreplaceable habitat<sup>24</sup> has such a high value in biodiversity terms, and its creation is so difficult, that meeting the biodiversity gain objective could be impossible, or extremely difficult, for any development resulting in its loss. The definition of irreplaceable habitats in the National Planning Policy Framework is not exhaustive, which has led to debate around which habitats are irreplaceable and therefore not subject to the biodiversity net gain requirement.

We understand that net gain cannot be achieved where irreplaceable habitat is lost, and that impacts on 'irreplaceable' habitats are not adequately measured by the biodiversity metric 3<sup>25</sup>. They require separate consideration which must comply with relevant policy and legislation, including compensation requirements. Mandatory biodiversity net gain will not change the existing strong protections and compensation requirements<sup>26</sup> for these habitats in planning policy.

The Environment Act therefore makes provision for 'modifying or excluding' the application of the biodiversity gain condition in relation to development where the on-site habitat includes irreplaceable habitats (as defined in regulations). This includes irreplaceable habitat located within statutory designated sites for nature conservation.

## Proposals

After detailed engagement with stakeholders (both through this consultation and wider stakeholder engagement during the implementation period), the UK Government intends

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<sup>24</sup> [National Planning Policy Framework \(2021\) Glossary](#) defines irreplaceable habitats as: 'Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.'

<sup>25</sup> Natural England (2021) Biodiversity Metric 3.0 – User Guide (July 2021 update, page 15, principle 4) <https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>

<sup>26</sup> [National Planning Policy Framework \(2021\) Paragraph 180\(c\)](#) states that 'development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists'.

to use secondary legislation to remove development, or component parts of development, on irreplaceable habitats from the scope of the requirement for 10% biodiversity net gain.

When a development results in losses of both irreplaceable and non-irreplaceable habitat, the biodiversity net gain requirement will still apply to any affected non-irreplaceable habitat. The area of irreplaceable habitat, and the bespoke compensation agreed for this area, should be omitted from the main biodiversity metric calculation for the development.

When exempted from mandatory biodiversity net gain, development, or parts of development proposals, on irreplaceable habitats would still require bespoke compensation to be agreed with the relevant decision maker.

The UK Government will set out in secondary legislation a list of habitats considered to be irreplaceable for the purposes of mandatory biodiversity net gain. This list will be accompanied by short supporting guidance on what constitutes irreplaceability and a set of principles to guide the implementation of bespoke compensation approaches. This compensation should be informed by appropriate ecological expertise and we expect that this would typically exceed the requirements that would be set through biodiversity net gain. We will work with Natural England and a range of external stakeholders to draft the definitions and guidance.

We propose that any developer proposing development on irreplaceable habitat would still be required to submit, for the planning authority's information, a version of a biodiversity gain plan providing information about irreplaceable habitats present before and after development (which may be recorded using the biodiversity metric) and the steps taken to minimise adverse effects on these habitats. This information will be helpful in assessing impacts on irreplaceable habitats, informing decision making and may contribute in part (alongside professional advice) to designing any appropriate compensation.

Where there are no direct or indirect negative impacts on an irreplaceable habitat, appropriate enhancements could be made to it as part of a net gain plan. These enhancements would be included as part of the overall biodiversity metric calculation.

### 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]

- 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]

- 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]

- 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]

- 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]



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

## Phased development and development subject to subsequent applications

### Background

Phased developments, such as large residential sites delivered across multiple stages, will require flexibility to accommodate changes over time, particularly where development is delivered over a long period, or where detailed proposals are submitted for approval through a reserved matters application pursuant to an outline permission.

Therefore, a method of securing the principles around how biodiversity net gain will be delivered needs to be in place when outline permission is granted, with a further approval process once details are submitted or permission is otherwise granted for phased development.

### Proposal

For applications for outline planning permission<sup>27</sup> and permission which have the effect of permitting development in phases, there will be additional requirements for the biodiversity gain information to be submitted with the application. These will be set out in secondary legislation.

### The process

As with all applications, those for outline planning permission and phased development will require the submission of biodiversity gain information. We propose that for outline and

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<sup>27</sup> Outline planning permission means planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more reserved matters. The matters which may be reserved are access, appearance, landscape, layout and scale (see article 2 of the Town and Country (Development Management Procedure) (England) Order 2015).

phased permissions we will ask the applicant to explain the strategy to achieve the biodiversity gain objective across the whole site and to demonstrate how this could be delivered on a phase-by-phase basis. This would include:

- the key principles that will be followed to ensure biodiversity gain commitments are achieved through subsequent detailed design
- how biodiversity net gain delivery will be tracked on a phase-to-phase basis, including the target percentage gains to be delivered at each stage. For most phased developments, we intend to state in guidance that biodiversity gains should be 'frontloaded' into earlier stages. This will help to avoid the risk of net losses being caused by later stages being delayed or cancelled
- the approach to be taken in the event that subsequent phases do not proceed or fail to achieve their biodiversity net gain targets
- that the pre-development biodiversity value for the whole site will be agreed as part of the framework plan and used as the basis for agreeing the detailed proposals through subsequent applications pursuant to the approved development
- a mechanism to link the framework plan to subsequent applications pursuant to the approved development

As we set the scope of biodiversity gain information to be submitted with these applications, we will have regard to the framework for handling and determining such applications including the matters which may be reserved when outline planning permission is granted.

With respect to securing delivery of the biodiversity gain requirement, we propose to require through secondary legislation that a biodiversity gain plan would be submitted for approval prior to the commencement of individual phases of development.

### **Changes to development proposals and minerals permissions**

In the current planning system, an application can be made for minor non-material amendments to permission (under section 96A of the Town and Country Planning Act 1990) or for variation of conditions attached to a permission (under section 73 of the Town and Country Planning Act 1990).

In each case the mandatory net gain condition imposed on the original permission will continue to apply, and the outcome of the application cannot result in the disapplication or variation of the net gain condition.

In the case of an application for permission under section 73, if:

- a) a biodiversity net gain plan has been approved in relation to the earlier permission, and
- b) the conditions subject to which the new permission is granted under section 73 do not affect the post-development biodiversity value of the on-site habitat as specified in the earlier plan

Then the earlier plan is regarded as approved for the purposes of the new permission and another biodiversity gain plan or approval is not required.

For section 73 proposals that affect the post-development biodiversity value, the local planning authority will need to approve a new biodiversity gain plan for the proposal. This biodiversity gain plan should apply the same baseline as the previous development. This means that the achievement of at least a 10% net gain can be secured without requiring the applicant to deliver further gains on top of their original 10% net gain.

We recognise that minerals sites can, within one planning permission, contain several phases of extraction and restoration and we are considering the additional discretion or considerations that mineral planning authorities might need to apply in considering mineral sites' biodiversity gain plans.

This would be supported with guidance and might include looking at iterations of the biodiversity metric as it is applied at various extraction phases or applying the biodiversity metric in a way that better acknowledges the effects of habitats created in advance or at later stages in the scheme.

We also know that Reviews of Old Minerals Permissions (ROMPs) typically result in the amendment of planning conditions and attaching modern conditions to old planning permissions. As a new permission is not being granted, we do not generally consider it reasonable to attach the mandatory biodiversity gain requirement to old permissions during these reviews.

### **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]

### **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]

## Small sites

### Background

In the 2019 response to the 2018 net gain consultation<sup>28</sup>, the UK Government committed to keeping minor development<sup>29</sup> in scope of the biodiversity gain requirement, but pledged to consider whether minor developments should be subject to four themes of variation:

- a potentially longer transition period (than the general 2-year period, which means net gain would start in late 2023) for the commencement of the biodiversity gain condition
- a potentially lower percentage net gain requirement
- simplification of the net gain administrative process
- a simplified biodiversity metric

The 2019 net gain consultation response presented a narrower definition for ‘small development’ (than that for minor development) when determining whether the use of the simplified ‘small sites biodiversity metric’ would be appropriate:

‘Sites of fewer than 10 residential units<sup>30</sup> or an area of less than 0.5 hectares for other types of development (unless priority or protected habitats are present).’

Natural England published a beta version of the Small Sites Metric in July 2021, together with a short consultation on the metric and its scope<sup>31</sup>. The biodiversity metric to be used

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<sup>28</sup> Defra (2019) Net gain summary of responses and UK Government response

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/819823/net-gain-consult-sum-resp.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/819823/net-gain-consult-sum-resp.pdf)

<sup>29</sup> Minor development being defined (i) for residential: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare, or where the number of dwellings to be provided is not known, a site area of less than 0.5 hectares; (ii) For non-residential: where the floor space to be created is less than 1,000 square metres OR where the site area is less than one hectare.

<sup>30</sup> This threshold would be defined in terms of ‘dwellinghouses’ rather than ‘residential units’ for consistency with the Town and Country Planning (Development Management Procedure) (England) Order 2015.

<sup>31</sup> The Small Sites Metric (SSM) has been developed by Natural England and was published as a draft alongside biodiversity metric 3 in July 2021

<http://publications.naturalengland.org.uk/publication/6047259574927360>

for small sites would be subject to further consultation before being published as a biodiversity metric for use in mandatory biodiversity net gain.

We have continued to consider ways of minimising process burdens in developing our proposals and believe that our current approach is fit for minor development, but we want feedback on whether further action under any of these four variation themes is necessary.

## Proposals

We intend to take forward the option of a simplified biodiversity metric for developments on small sites as defined in the 2019 consultation response. We are also aware of efforts being undertaken to provide services which automate some elements of completing the biodiversity metric tool (aside from habitat identification) which could help to minimise process burdens without compromising environmental benefits. We expect that further innovation in net gain guidance and tools will help to minimise burdens for small sites whilst improving ecological outcomes.

We do not consider that a lower percentage gain would be appropriate for small development, as all sites should make a proportionate contribution to biodiversity net gain. A lower percentage requirement for small sites would introduce more complexity than necessary and risk gaming for developments near the threshold. Other policy or design requirements might have the effect of requiring higher percentages to be delivered anyway.

We have heard opposing views on the length of transition periods, with some stakeholders recognising the potential benefits of applying the biodiversity net gain condition to larger developments a short time before the smaller developments. This could smooth the increase in biodiversity gain plans that planning authorities need to approve and give the wider sector the chance to become more familiar with the approach before applying it to minor development.

Other stakeholders have asked that the transition period is made shorter than 2 years for all development and that biodiversity gain is implemented as soon as possible.

The UK Government is not currently looking to amend the 2-year transition period. We would, however, welcome feedback on whether a longer transition period (up to 12 months longer) for minor development would be of practical benefit to planning authorities and developers and specific reasons as to why it might be necessary.

### 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]

### 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]

### 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]

# Nationally Significant Infrastructure Projects

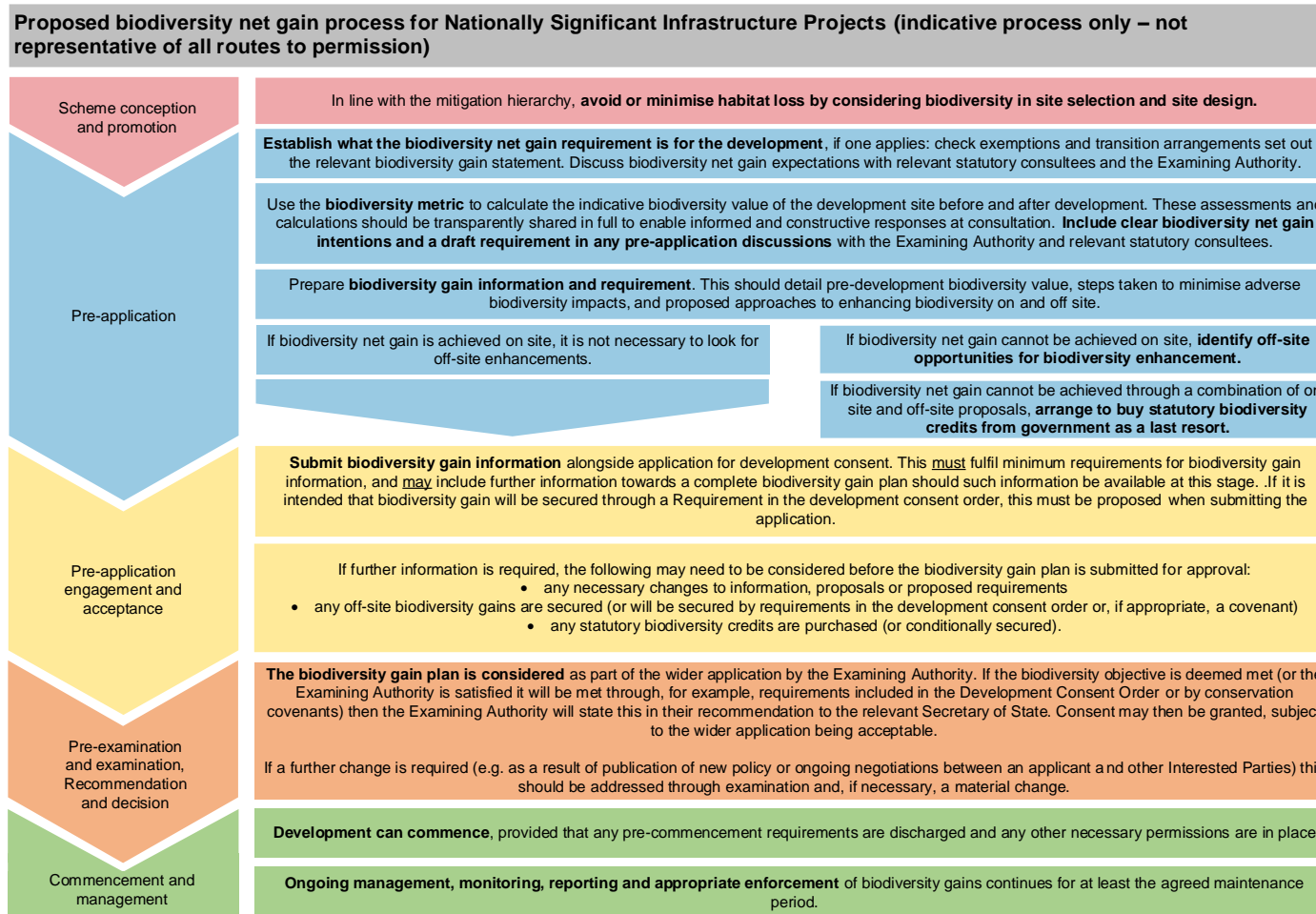
## Background

The UK Government tabled an amendment to the Environment Act which establishes a new requirement for Nationally Significant Infrastructure Projects (NSIPs) to deliver biodiversity net gain.

The requirement would not apply to projects or elements of projects outside of England and would not initially apply to elements of projects which are located in the marine environment (such as those taking place entirely below the low water mark). However, the amendment allows the UK Government to extend the net gain objective, with any suitable modifications, to include projects located in the marine environment when an appropriate approach to marine net gain has been developed.

This consultation is seeking views on the core policy for this requirement as it applies to NSIPs. The detail and specific wording of the requirement for NSIPs will be subject to further consultation.

We have published, alongside this consultation, an addendum to the 2019 biodiversity net gain Impact Assessment, which considers impacts in relation to NSIPs. We will separately publish research commissioned on the costs of delivering biodiversity net gain for infrastructure projects.



**Figure 4: Summary process diagram for proposals as they would apply to Nationally Significant Infrastructure Projects**



## Proposals

### Scope, percentage, and targeted exemptions

As is the case for development under the Town and Country Planning Act 1990, we want the biodiversity net gain approach for Nationally Significant Infrastructure Projects (NSIPs) to be applied widely and without broad exemptions.

There may, however, be a case for narrow targeted exemptions where particular types of project, or individual projects, are unable to deliver biodiversity net gain or for which the requirement would be disproportionate.

As well as any necessary exemptions, we may need to make provision in the exemptions or transition arrangements for projects which are not expected to be caught by the requirement, but which might be caught at a later project stage. For example, this could be because they are planned to be completed before the requirement takes effect but are delayed unexpectedly or need to amend the permission.

It may be the case that some types of NSIP are unable to deliver a 10% biodiversity net gain but may be able to deliver a lower percentage target. We intend to apply the 10% as a minimum requirement broadly but, if modifications prove to be necessary, we would prefer to apply a different percentage requirement rather than to apply an exemption.

As is the case for development consented under Town and Country Planning Act 1990, it is the UK Government's intention to remove development (or components of development) on irreplaceable habitats from the scope of the biodiversity net gain requirement for NSIPs. However, the exact nature of these arrangements may require further engagement and will be set out in biodiversity gain statements, which are themselves subject to separate consultation.

#### 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]

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

It is important that we bring the requirement into effect at the right time so that projects can take advantage of the benefits a net gain approach can offer. The requirement must be capable of addressing the urgent challenge of nature recovery, whilst also ensuring the timely delivery of vital infrastructure.

The biodiversity net gain requirement for NSIPs will be brought forward through a ‘biodiversity gain statement’ or statements. We want to maintain consistency across different types of projects to reduce the scope for confusion and the need to define requirements in environmental reporting.

We therefore propose to design a single ‘core’ statement that we will consult on for the range of relevant types of NSIP. If this consultation tells us that there are types of projects for which this core approach will not work, we will reconsider whether a single core statement is appropriate or add further bespoke statements for these types as is necessary.

The biodiversity gain statement, or statements, will be published as standalone policy documents but we intend to subsequently integrate these into the National Policy Statements when these are reviewed. National Policy Statements comprise the UK Government’s objectives for the development of nationally significant infrastructure in a particular sector and state.

These biodiversity gain statements will set out the biodiversity net gain requirement for all types of NSIPs, including the date from which the objective is expected to be achieved, and the stage of project design to which commencement threshold applies.

By November 2025, it is our intention that the requirement should apply across all terrestrial projects, or terrestrial components of projects, which are accepted for examination through the NSIPs regime<sup>32</sup>.

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<sup>32</sup> This does not apply to development, or components of development, in the marine environment below the low water mark. Any requirement or transition arrangements for marine net gain would follow after the consultation on principles for marine net gain due to be published later this year.

It may be that a biodiversity gain statement specifies an earlier date in relation a certain type of infrastructure (as defined in the Planning Act 2008) if responses to this consultation confirm that an earlier commencement is achievable for some types of project.

Projects which have been accepted for examination by the Planning Inspectorate before the specified commencement date would not be required to deliver mandatory biodiversity net gain (though might be delivering it in response to policy or voluntary commitments).

We will give developers, planners, and ecologists sufficient time to plan to deliver biodiversity net gain on these projects. We will therefore publish biodiversity gain statements at least 2 years before the requirement takes effect in November 2025 for the relevant projects (so no later than November 2023). If earlier commencement than November 2025 is considered achievable and is specified for certain projects, the relevant biodiversity gain statement will be published at least 2 years before that date.

### 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]

### Question 19

Do you consider that the 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]

### 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]

## **NSIP off-site gains and a 'portfolio approach'**

The mitigation hierarchy would continue to apply for NSIPs as it would for development consented under the Town and Country Planning Act 1990. Negative impacts on biodiversity should be avoided, with mitigation and compensation used where this is not possible or appropriate.

Off-site enhancement would need to be registered in some way to maintain transparency and facilitate monitoring. For mandatory biodiversity net gain under the Town and Country Planning Act 1990, this registration will take place in the biodiversity gain site register.

We intend to use the same register for NSIPs, subject to further consultation, but are also considering the need for additional or alternative mechanisms which might encourage biodiversity enhancements of the developer's wider estate.

National Highways, Network Rail and National Grid have existing organisational plans to increase the number of their projects delivering biodiversity net gain. It may be possible for these and other organisations to make use of their existing estates, or other strategically located land, to meet a biodiversity gain requirement in relation to an NSIP which they are sponsoring.

Where appropriate and in line with the mitigation hierarchy, we could explore a system which enables organisations to deliver and transparently report on additional enhancements on their estate to meet the net gain requirement in relation to sponsored NSIPs.

This could in some cases replace the use of the biodiversity gain site register or certain parts of the registration process. Any enhancements outside their organisational estate would need to be registered or otherwise recorded.

### **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]

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

It is important that the applicant can clearly demonstrate that the biodiversity net gain objective has been met through the examination process. We propose applying an approach for NSIPs that would be broadly comparable to that for development granted permission under the Town and Country Planning Act 1990.

You may wish to read Part 3 of this consultation, though some sections do not apply specifically to NSIPs, to understand the detailed proposals for that regime.

This would mean developers submitting a development consent application for a NSIP must prepare a biodiversity gain plan, which would include much of the same information as the template at Annex B and a completed biodiversity metric<sup>33</sup>. The developer would provide this plan to the Planning Inspectorate along with other documents for examination by the Examining Authority and subsequent determination.

A draft biodiversity gain plan would be provided alongside the developer's application for development consent to facilitate the communication of impacts and informed consultee responses.

In the same way that biodiversity gain plans under the Town and Country Planning Act 1990 can be approved when enhancements are secured by conditions or planning obligations, we expect that NSIP enhancements will be secured with Requirements included in the Development Consent Order (similar to planning conditions in Town and Country Planning Act 1990 development) or, if appropriate, through conservation covenants.

We have heard from stakeholders that NSIPs often need to incorporate significant areas for environmental mitigation or compensation within their development site boundaries. This may have the effect of making biodiversity net gain relatively more challenging than for development consented under the Town and Country Planning Act 1990. This is because the percentage gain would also apply to these mitigation areas and other development types may be able to exclude such areas from their development boundary

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<sup>33</sup> Subject to further consultation, we intend to apply the same biodiversity metric for both regimes. We recognise that additions to the metric guidance or wider amendments to the metric may be necessary.

and treat them as off-site enhancements (so that the percentage gain target does not apply).

We are therefore considering whether a distinction should be made for NSIPs between on-site habitats in the development area and any dedicated mitigation areas.

To remove the incentive to clear habitats in advance of ecological assessments, we intend to make provision in the biodiversity gain statement for an earlier habitat value to be applied as the baseline where the value of habitats has been recently degraded<sup>34</sup>.

The specifics of the approach and how it fits into the broader consenting process will be set out in a draft 'biodiversity gain statement' for NSIPs in a future consultation.

### 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]

### 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]

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<sup>34</sup> This is expected to be drafted to achieve a similar effect to the 'Pre-development biodiversity value' paragraphs of the Environment Act's provision for development consented under the Town and Country Planning Act 1990. These allow for degradation in habitat value since 30 January 2020 to be taken into account when determining on-site biodiversity value. The date is likely to be later for NSIPs, potentially July 2021 to reflect the later introduction of the provisions applying biodiversity net gain to NSIPs.

### 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]

### **Maintenance period for Nationally Significant Infrastructure Project developments**

Under the approach specified for Town and Country Planning Act 1990 development, biodiversity gain sites must be maintained for a minimum period of 30 years from the time of habitat creation<sup>35</sup>.

The minimum duration for secured off-site biodiversity gains allocated to NSIPs will be specified in biodiversity gain statements. The UK Government does not intend to set a minimum period for NSIPs that is shorter than the 30-year period specified for other kinds of development.

A UK Government amendment to the Environment Act will allow the Government to review, and if appropriate increase, the minimum duration for gain sites under the Town and Country Planning Act 1990 biodiversity gain provisions.

The UK Government would similarly be able to review this aspect of the policy for NSIPs and accordingly amend the biodiversity gain statement or, where it has been incorporated, make amendments through the next review of the relevant National Policy Statement.

As is the case for other types of development, NSIPs are often designed to operate for many decades into the future. It may be appropriate to consider longer maintenance periods in relation to off-site biodiversity gains allocated to NSIPs to reflect their longevity and national significance.

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<sup>35</sup> The point at which the metric recognises habitat creation is commenced and takes account of temporal risk from (for example when trees are planted, or natural regeneration management regimes are established for woodland creation).

However, increasing the length of the minimum duration might also result in increased costs for NSIP providers or result in less fluidity in the market for off-site biodiversity gains across consenting regimes.

### 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]

### Compulsory acquisition

Nationally Significant Infrastructure Project (NSIP) providers will have a range of options available to deliver biodiversity net gain, including avoidance of impact through options appraisal and design, on-site mitigation, purchase of biodiversity units on the market, other delivery of off-site gains, and the purchase of statutory biodiversity credits.

There may be instances where NSIPs need to deliver gains close to their site but do not have the flexibility to do this. NSIP providers might, in such circumstances, want to use compulsory acquisition powers to extend the boundary to deliver on-site biodiversity gains.

However, we expect that it would generally be preferable for developers to deliver further gains within the existing project boundary or through the purchase of market off-site biodiversity gains without resorting to additional compulsory acquisition of land.

### 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]



## Marine infrastructure

The biodiversity net gain requirement applies to projects in England, and therefore includes development which occurs down to the low water mark. This means that the requirement would apply to any onshore components of offshore schemes, including components in the intertidal zone, such as onshore cabling for an offshore wind farm.

We will take account of the preference for strategic gains (such as projects contributing to larger scale coastal restoration and conservation schemes) in the intertidal area when drafting policy for the biodiversity gain statement.

When proposals for marine net gain are clear, we will consider options to improve interactions between the intertidal approach of the biodiversity metric with marine net gain.

A large proportion of coastal and intertidal areas are statutory designated sites, such as Sites of Special Scientific Interest, Special Areas of Conservation, Special Protection Areas, Marine Conservation Zones and Ramsar sites.

Our proposals for enabling habitat enhancement projects in these areas whilst respecting additionality objectives are set out in Part 3 'additionality'.

### 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]

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

As set out in the introduction, we want to provide more certainty on how the biodiversity gain condition can be met for development consented under the Town and Country Planning Act 1990.

For development which is subject to the requirement it will be necessary to:

- assess and understand the baseline habitats and design options for the site using the metric and start to complete a biodiversity gain plan
- secure and register off-site habitat enhancements on other landholdings or from the market, if a sufficient biodiversity gain cannot be achieved within the development site
- purchase UK Government-provided statutory biodiversity credits, if off-site habitat enhancements cannot be secured on other landholdings or sourced from the market
- submit the completed biodiversity gain plan to the relevant planning authority, which includes the complete on-site and off-site biodiversity metric assessment and any purchased statutory biodiversity credits
- wait for the plan to be approved before development can commence subject to other pre-commencement conditions

### Biodiversity gain plan

#### Background

The purpose of the biodiversity gain plan is to provide a clear and consistent document with which a developer can demonstrate their biodiversity net gain and a planning authority can check whether the proposals meet the biodiversity gain objective.

There is currently no stipulation in national planning policy for a particular format of plan or metric assessment. We believe that introducing a consistent format will mean that planning authorities do not have to spend time interpreting the range of different templates that might otherwise be produced.

The Environment Act's provisions for development granted permission through the Town and Country Planning Act 1990 state that the biodiversity gain plan must provide:

- information about how the development has taken steps to avoid and minimise impacts on biodiversity,
- the pre-development and post-development biodiversity value of the on-site habitats,
- any off-site biodiversity gains which are registered and allocated to the development, and
- any UK Government-provided statutory biodiversity credits purchased for the development

The Environment Act sets out a power for the Secretary of State to make provision in regulations for other information to be included in a biodiversity gain plan, the form of a biodiversity gain plan and the procedure to be adopted in relation to the submission of a biodiversity gain plan. We intend to require proportionate information on habitat management and monitoring for retained, enhanced, or newly created habitats.

## Proposals

We recognise that it is important for planning authorities and communities to know what is being proposed in terms of biodiversity net gain early in the planning process. We will therefore mandate through secondary legislation that certain core **biodiversity gain information** must be provided with the application for planning permission.

This information is not as comprehensive as a complete **biodiversity gain plan**, which will not be required at this stage, in recognition of certain circumstances where details of landscaping are not fully developed or where the detail of biodiversity gain plans are contingent on other matters, such as site investigation works.

Outline and phased development permission: we propose there are additional biodiversity gain information requirements for applications for outline planning permission, and permission which has the effect of permitting development in phases. These proposals are set out in Part 2 of this consultation.

The core **biodiversity gain information** will include:

- the pre-development biodiversity value,
- steps taken to minimise adverse biodiversity impacts,
- the proposed approach to enhancing biodiversity on-site, and
- any proposed off-site biodiversity enhancements (including the use of credits) that have been planned or arranged for the development

The core biodiversity gain information will aid decision-making by allowing the planning authority to:

- better understand how the proposed development intends to meet the biodiversity gain objective
- understand the baseline biodiversity value of the site, and to see how any degradation of this value since 30 January 2020 other than that associated with a planning permission has been considered<sup>36</sup>
- be aware of the steps taken to minimise any adverse impacts of the development on the biodiversity value of the site,
- understand whether the opportunities for on-site enhancements and landscaping have been fully considered, and
- consider any conditions, obligations, or conservation covenants necessary to secure biodiversity net gain

The application for permission will then be determined, having regard to the biodiversity gain information.

However, we recognise there will be cases where an applicant is able to complete a plan which meets the statutory requirements with the application or before the application for permission is determined.

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<sup>36</sup> The planning authority may require that an earlier baseline is applied where activity, other than that permitted by a planning permission (for example an earlier development), has reduced the on-site biodiversity value since this date. We do not currently intend to exercise the powers to specify other types of consent which would remove degradation activity from consideration. This is intended to remove any incentive for pre-assessment habitat removal.

Therefore, we propose that you can submit your **biodiversity net gain plan**:

- With your planning application or before permission is determined; in this case, assuming permission is granted and the plan is approved, the net gain condition will be immediately discharged and development can commence
- Alternatively, after planning permission is granted, but before commencement of development

In all cases, we are proposing you will need to submit the core **biodiversity gain information** with your planning application, and to have finalised and approved a complete **biodiversity net gain plan** before commencement. The biodiversity gain information would usually form part of a biodiversity gain plan.

Any off-site biodiversity gains, the use of credits, and significant on-site enhancements (such as a park or meadow area managed for biodiversity) will be part of the biodiversity gain information and will need to be formally secured<sup>37</sup>. We will work with the sector to develop model planning conditions, planning obligations and template conservation covenants to achieve this.

The planning authority will approve the biodiversity gain plan once they are satisfied that:

- the biodiversity gain plan and completed biodiversity metric (submitted as the completed calculator document, not a 'snapshot' or summary) show a measurable net gain of at least 10% across all unit types (area-based, and where relevant, linear, and riverine habitats), having regard to policy on matters such as additionality
- the information, including pre-development and post-development biodiversity values, presented in the biodiversity gain plan is complete and meets the statutory requirements, and

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<sup>37</sup> Where the planning authority considers that an increase in the biodiversity value of on-site habitat is significant in relation to the pre-development value, that increase is only considered when calculating the post-development value of the on-site habitat. This is subject to a requirement that it will be maintained for at least 30 years after the development is completed. While there is not an explicit requirement to legally secure other less significant on-site enhancements (such as amenity planting areas or individual street trees), we would also expect suitable management arrangements to be made for these in landscaping plans as is already normal practice and will clarify this in guidance.

- any claimed gains (both on-site and off-site) are appropriately secured and allocated, including the point in the development process that these gains are to be delivered and a proportionate description of how enhancements will be managed and monitored

It remains the UK Government's intention to continue to allow higher percentage targets to be set by planning authorities at a local or site level. Any higher target should be made clear at an early stage in the planning or development process and careful consideration should be given to the feasibility and achievability of any requirements above 10%, which can have significant impacts on the costs of developing a site.

We propose that on-site biodiversity gains should be secured for delivery within 12 months of the development being commenced or, where not possible, before occupation. A clear timeframe for delivery should be reflected in any planning conditions, obligations or covenants which secure on-site gains. Any longer delay in creation must be reflected in the biodiversity metric calculation, meaning that a lower number of biodiversity units is generated. This will mean that long delays to the delivery of habitats would require more enhancement to be done, usually at greater cost.

We intend to publish a biodiversity gain plan template<sup>38</sup> in order to set out requirements and to standardise recording of information. A draft is contained in Annex B. This is a working draft and will be updated based on responses to this consultation and extensive testing with stakeholders. We aim to produce a more concise version of the biodiversity gain plan template for developments using the small sites metric and a different template for outline development applications.

In the longer-term, the intention is that the greater digitisation of the planning process should allow such information to be collected in a digital 'machine-readable' format and require compliance with published data standards.

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<sup>38</sup> This template is intended to set out the minimum legal requirements for a biodiversity gain plan. It is separate from [CIEEM's Biodiversity Net Gain Report and Audit Template \(July 2021\)](#) which is intended to provide a framework for writing reports for biodiversity net gain projects in line with current planning policy and practice.

### 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]

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]

### 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]

## Off-site biodiversity gains

### Background

To achieve net gain in a way that is consistent with the mitigation hierarchy and reflects the 'spatial hierarchy' preference for local enhancements, developers should aim to avoid negative impacts and mitigate impacts on-site where they cannot be avoided<sup>39</sup>.

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<sup>39</sup> Following the steps set out in the introduction and Figure 3 of this consultation.

Where this is not possible, developers will be able to create or enhance habitat off-site. The establishment of a market will ensure that a supply of off-site biodiversity units is available to developments that need them.

Landowners or managers who can create or enhance habitat to the required standards on their land will be able to sell the resulting biodiversity units to developers. Intermediaries such as brokers may facilitate these transactions.

Market analysis estimated that the introduction of mandatory biodiversity net gain would generate annual demand for around 6,200 off-site biodiversity units with a market value in the region of £135 million<sup>40 41</sup>. It concluded that the market has potential to meet demand for off-site biodiversity gains. However, shortages of supply are a risk in the early years of the market and for highly urban areas, islands, and some habitat types. Most instances of local shortages are likely to be alleviated by allowing development to use biodiversity units purchased from outside of the local area.

## Proposals

### The use of off-site biodiversity gains

Developers will be able to deliver off-site biodiversity gains on other landholdings, or purchase biodiversity units on the market. Policy and guidance will encourage off-site biodiversity gains to be delivered locally to the development site, which is incentivised by the biodiversity metric's spatial risk multiplier.

Where the available local opportunities for off-site habitat creation or enhancement are insufficient for developers to meet their net gain requirements, off-site delivery outside of the local area will be allowed.

All off-site gains must be delivered within England. Spatial nature strategies, such as Local Nature Recovery Strategies, should be used to target delivery of off-site biodiversity gains,

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<sup>40</sup> Eftec (2021) *Biodiversity Net Gain: Market Analysis Study*, NR0171 [www.randd.defra.gov.uk](http://www.randd.defra.gov.uk)

<sup>41</sup> This included demand from all types of development, including Nationally Significant Infrastructure Projects (NSIPs), and was based on assumptions of 50% on-site delivery by developers, and a unit price of £20,000 to £25,000.



and habitat delivery in strategic areas will be incentivised by the biodiversity metric's strategic significance score<sup>42</sup>.

In determining whether to grant permission or approve the plan, whether the developer has adequately considered the on-site and local off-site options before looking further afield may be a relevant consideration. Further guidance will be published to support decision-making.

To count towards a development's net gain requirement, off-site biodiversity gains will need to be secured through a conservation covenant or planning obligation and registered prior to final approval of the biodiversity gain plan. The process and eligibility criteria for registering biodiversity gain sites are set out in Part 3 'the biodiversity gain site register'.

Off-site habitat creation or enhancement does not need to be completed prior to its registration or the sale and allocation of biodiversity units to a development. To minimise delays between development impacts and the delivery of compensatory habitat, we propose to require off-site works to commence as soon as is feasible, and no more than 12 months after the discharge of the mandatory pre-commencement biodiversity net gain condition. We are considering whether to set this requirement through off-site eligibility criteria or as a consideration for biodiversity gain plan approval. This should be reflected in the conservation covenants or planning obligations used to secure the gains and will be considered in the approval of the biodiversity gain plan.

Where possible, we will encourage habitat banking to allow enhancements to be delivered before the development takes place (see Part 3 'habitat banking'). Any delay in enhancement (relative to the loss of on-site habitats) must be reflected in the biodiversity metric calculation, meaning that a lower number of biodiversity units is generated. This will mean that long delays to the delivery of habitats would require more enhancement to be done, usually at greater cost.

The Environment Act states that biodiversity gain sites (off site) must be maintained for at least 30 years after the completion of the works to create or enhance the habitat. We will

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<sup>42</sup> Natural England (2021) Biodiversity Metric 3.0 – User Guide <https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>

encourage and enable developers and landowners to secure sites for a longer period (or in perpetuity) where possible through policy and guidance.

Biodiversity gain site enhancements will be secured through conservation covenants or planning obligations which can ensure that habitats are maintained even if the land is sold.

The UK Government has amended the Environment Act to enable future increases to the 30-year minimum period (for on-site and off-site gains). The UK Government will consider increasing this minimum for new developments and registrations after evaluating mandatory biodiversity net gain practice.

Any increase in the minimum duration would be made after consideration of the impacts on the supply of potential gain sites and, to avoid disrupting establishment of the market, would not take place in the first 3 years after commencement of mandatory biodiversity net gain. Any increase would not retrospectively change pre-existing agreements at that time.

### 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]

### 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?

## The market for biodiversity units

Any landowners or managers will be able to create or enhance habitat for the purpose of selling biodiversity units, provided that they are able to meet the requirements of the policy, including additionality and register eligibility requirements, and demonstrate no significant adverse impacts on protected and priority habitats.

Suppliers of biodiversity units will be able to sell to developers anywhere in England, provided that the use of those units is appropriate for the development in question and the

distance between the development and the off-site habitat is properly accounted for in the biodiversity metric.

Planning authorities will be able to sell biodiversity units from their own land or act as a broker for third party units. Where planning authorities choose to participate in the market, they will be expected to manage any associated conflicts of interest and will need to comply with the same rules and requirements that apply to other biodiversity unit suppliers.

Biodiversity net gain will not enable planning authorities to direct developers to purchase biodiversity units from them in preference to other market suppliers that are able to deliver equivalent or better outcomes in relation to the requirements of the policy. Planning authorities will not be able to charge developers a general tariff for delivery of off-site gains which is not associated with specific gain sites that are registered and allocated to the development in question.

If a developer is able to exceed the statutory requirements for biodiversity net gain on a given development site, and any relevant targets for biodiversity net gain or green infrastructure required by local planning policy, we are minded to allow them to use or sell the excess biodiversity units as off-site gains for another development. The area of land on which the excess biodiversity units are to be delivered would need to be clearly identified in the biodiversity gain plan for the original development. To ensure additionality, the excess gains should be distinct from those necessary to meet the biodiversity net gain requirements for the original development or to make the original planning application acceptable in planning terms. To be used as off-site gains for another development, they would need to be registered on the biodiversity gain site register.

To facilitate the operation of the biodiversity unit market, our priorities include:

- setting clear regulations and providing guidance
- arranging oversight functions to ensure consistent implementation across England
- creating supporting systems if needed, such as the biodiversity gain site register
- upholding probity rules and avoiding conflicts of interest in relation to the role of the UK Government and other public sector bodies
- establishing an approach to statutory biodiversity credit pricing, sales, and investment which supports, and does not conflict with, the market

We do not currently propose to establish a centralised trading platform for biodiversity units or for the UK Government to take on other roles which could be performed by the private sector or other third parties, such as brokering.

We expect the price for biodiversity units to be agreed between buyers and sellers, and for them to ensure that it is sufficient to cover the costs of creating or enhancing the habitat and maintaining it for a minimum of 30 years. It will also be for the buyer, seller, and any other parties to the agreement to agree payment terms, for example whether there would be one lump-sum payment, staged payments, or payment by results.

The market for biodiversity units will not operate in isolation, and we are aware that landowners and managers are keen to understand whether they will be able to combine or 'stack' payments for different environmental services from the same parcel of land. Further information is set out in Part 3 'additionality' of this consultation.

We are aware that farmers want to understand how committing land for habitat creation or enhancement will affect their eligibility for Agricultural Property Relief and Business Property Relief. Work is underway to provide clear guidance on this.

Information in the biodiversity gain site register will be publicly accessible and, over time, we expect the private sector to play a role in collating and sharing market supply, demand, and price information.

We are publishing market analysis<sup>43</sup> alongside this consultation which includes estimates of potential biodiversity unit supply and demand in each planning authority area and summarises the available evidence on biodiversity unit prices.

Work is ongoing to develop our approach to regulating the biodiversity unit market, as part of broader ongoing work on environmental markets.

### 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]

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<sup>43</sup> Eftec (2021) *Biodiversity Net Gain: Market Analysis Study*, NR0171 [www.randd.defra.gov.uk](http://www.randd.defra.gov.uk)

### 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]

### 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]

## Habitat banking

Habitat banking can help to smooth out supply and demand by completing the necessary works to establish the habitat in advance and 'banking' the resulting units, so they are available for sale when needed by developers. This approach is anticipated to enable delivery of larger, more strategic sites for nature.

We recognise the benefits that habitat banking offers for biodiversity net gain and are considering how the UK Government can best support this approach. Access to finance will be critical for habitat banking, and the UK Government is already offering investment-readiness support through the Natural Environment Investment Readiness Fund.

We are also working to provide clarity on the minimum requirements for habitat banks so that investment plans can be developed.

A habitat bank would need to be able to record and provide suitable monitoring information to demonstrate that the initial works to create or enhance the habitat had been completed by a given date if they wish to take advantage of the 'advanced creation' function in the

biodiversity metric (see metric guidance<sup>44</sup> and Part 3 ‘reporting, evaluation and monitoring’).

We would not require the whole land area within a habitat bank to be secured by a legal agreement for the minimum 30-year period prior to the first sale of units to a developer, although we would not prevent a landowner or manager from doing this if they chose to.

When, however, biodiversity units are sold to a developer, the associated parcel of land within the habitat bank would need to be secured by a legal agreement and registered prior to approval of the biodiversity gain plan for the associated development (see Part 3 ‘biodiversity gain plan’ and Part 3 ‘the biodiversity gain site register’).

Habitat created or enhanced after 30 January 2020 will be eligible for registration and sale of the associated biodiversity gains, provided it meets the other criteria (see Part 3 ‘the biodiversity gain site register’). Habitat created or enhanced before this date will not be eligible. This date has been selected to ensure the outcomes from the policy are additional, while avoiding penalising landowners and managers that have taken the initiative since our intention to mandate biodiversity net gain was confirmed in 2019.

### 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]

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<sup>44</sup> Natural England (July 2021) Biodiversity Metric 3.0 – User Guide

<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>

### 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]

### 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]

## The biodiversity gain site register

### Background

We previously set out our intention to establish a publicly available register of off-site gains, with clear criteria in place to ensure these sites are providing legitimate gains for biodiversity.

We also said we would work with stakeholders to design the register in a way that allows local communities to access information on habitat sites being delivered and for these sites to be tracked and monitored over time. This will allow for scrutiny of outcomes and will help avoid double counting of biodiversity gains.

For off-site gains to be included in a development's biodiversity gain plan they must be registered on the biodiversity gain site register and the registered gains allocated to the specific development in question.

## Proposals

### The criteria and process for registration

Registration will involve an online application to the register operator<sup>45</sup> who will assess whether the application (and its proposed enhancements) meets a set of eligibility criteria. In general, we expect units will be registered as required for each development.

Any development which does not require off-site units as part of the gain plan will not require an application to the national register, but we are exploring how the on-site information on gains in biodiversity gain plans can be included or linked to.

Larger sites or habitat banks may provide biodiversity units to more than one development. It may therefore be preferable for these sites to register some details about the whole site (such as location, consents to carry out works) when the first parcel is allocated. We will continue to work with providers of habitat banks and larger gain sites during the transition period to explore how we can streamline the application process.

For a site to be considered eligible for inclusion on the register it must meet the following proposed criteria:

- it is subject to a conservation covenant or a planning obligation that will require habitat enhancement:
  - o on land made available by a site provider with sufficient rights to the land
  - o by a specified person or body that is considered fit and proper to undertake the enhancement works
  - o to be suitably managed to meet the required enhancement
  - o to have commenced by a specified date (30 January 2020 or later)
  - o to be maintained for at least 30 years after the completion of those enhancement works<sup>46</sup>

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<sup>45</sup>The Environment Act states that the person who is to establish and maintain the biodiversity gain site register may be the Secretary of State, Natural England, or another person.



- the enhancement:
  - o is measured using the biodiversity metric against a baseline metric assessment (the baseline being its pre-enhancement state unless activities on the land have reduced its biodiversity value since 30 January 2020, in which case it becomes the pre-reduction biodiversity value)
  - o may be allocated to development in accordance with the terms of the conservation covenant or planning obligation
  - o complies with rules on additionality and stacking including on protected sites (see Part 3 ‘additionality’)
  - o is in England

On application, the register operator will assess a biodiversity gain site application against these criteria and will either approve, reject, or seek modification.

The time taken to determine an application will vary based on the size and complexity of the site. To provide certainty for developers and landowners, we intend to set out in regulation a maximum determination period, unless otherwise agreed between both parties. Our assumption at this stage is that this period should be 28 days.

We would welcome views on whether this strikes the right balance between speed and allowing the register operator sufficient time to review an application at a reasonable cost.

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<sup>46</sup> A UK Government amendment to the Environment Act will allow the UK Government to review, and if appropriate increase, the minimum duration for agreements securing biodiversity gain sites. After this period, the enhanced habitats are likely to be subject to a range of wider protections in policy or legislation which will incentivise their retention. In the unlikely event that biodiversity gain sites are subsequently developed, the Environment Act requires that the higher of the actual habitat value or the target value of the enhancement is to be taken as the baseline for this development. This will ensure that net gain can still be reached, even in this unlikely and undesirable scenario.

### 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]

### 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]

## Information that will be required by and recorded in the register

The register operator will, in confirming that the application complies with the criteria, ask for the following information to be provided:

- a) when the habitat enhancement works have already commenced:
  - o a statement that the enhancement is already under way or complete with supporting evidence
  - o a proportionate description of how habitat enhancements will be managed and monitored using a Habitat Management and Monitoring Plan
  - o a declaration that this management is considered by a competent person (to be defined in guidance) to be likely to result in the habitat enhancement specified
- b) when the habitat enhancement works commence after registration:
  - o a proportionate Habitat Management and Monitoring Plan describing how habitat enhancements will be achieved, managed, and monitored
  - o a declaration that this management is considered by a competent person (to be defined in guidance) to be likely to result in the habitat enhancement specified
  - o evidence that there is a legal obligation to carry out the necessary works upon allocation of the units to a development
- c) for all sites:

- o details of the conservation covenant agreement or planning obligation the site is subject to
- o details of the persons or body required under a conservation covenant agreement or planning obligation to carry out works for the purpose of habitat enhancement
- o details of the person or body required or contracted to maintain the enhancement for at least 30 years after completion of those enhancement works<sup>47</sup>
- o a statement that the applicant has checked whether the baseline habitat has deteriorated significantly since 30 January 2020, and how the baseline date has been appropriately adjusted to reflect (such as to disregard) any deterioration
- o details of any required consents or permits in place<sup>48</sup>
- o evidence and a declaration that the applicant has sufficient rights to the land
- o summary evidence and a declaration that the person carrying out the enhancement works is fit and proper
- o a biodiversity metric calculation
- o the location of the gain site in England, supplied in a Geographic Information System (GIS) format where possible
- o the size and type of habitats created or enhanced
- o the number of biodiversity units resulting from the biodiversity gain as determined by the biodiversity metric
- o the planning reference of the development to which any of the units are allocated

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<sup>47</sup> After completion of the initial enhancement works. This is the point at which the metric recognises habitat creation is commenced and takes account of temporal risk from (for example when trees are planted, or natural regeneration management regimes are established for woodland creation).

<sup>48</sup> We intend to require a declaration that any necessary consents for the enhancement have been secured, and that any appropriate safety considerations, such as aerodrome safeguarding requirements, have been properly addressed.

The above list is indicative of the evidence that would be requested. Further guidance on the process of registration, including when information should be provided, will be set out in the transition period.

It is intended that Habitat Management and Monitoring Plans for sites are included and published on the register. The UK Government is keen to avoid unnecessary duplication of information and will explore how best to manage this to prevent unnecessary burdens.

We maintain the view that the register should transparently show where gains are being delivered. This register will, as a minimum, detail:

- the location of gain sites
- the area (or length) and type of habitats created or enhanced
- the number of biodiversity units resulting from habitat creation or enhancement, calculated using the biodiversity gain metric indicated by the Secretary of State (this is anticipated to be biodiversity metric 3, subject to a further consultation to confirm it as the metric used for mandatory biodiversity net gain)
- the planning reference of the development to which the enhancement is allocated
- Habitat Management and Monitoring Plans for gain sites
- the enforcement body for gain sites (usually the planning authority or a conservation covenant's responsible body)

Our assumption is that all information provided as part of an application should be publicly accessible on the register unless there are legitimate reasons (for example the use of personal information) to limit access.

#### **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]

### 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]

### **Application fees and penalties for false and misleading information**

To cover the costs of administering the register, the UK Government intends to charge a fee to process register applications, in consultation with the register operator. The fee will be proportionate and will be set out during the transition period of the policy.

We intend to set the fee based on full cost recovery, including operation of the appeals process, where this is possible. This will make sure that the costs of operation will fall to those using and benefitting from the registration service.

The provision of false or misleading information to the register has the potential to undermine environmental benefits and confidence that promised gains will be delivered.

To disincentivise the provision of false information, the UK Government intends to make secondary legislation that allows the register operator to issue a financial penalty.

The penalty would be issued to anyone providing information to the register where they are found to have deliberately or recklessly provided false or misleading information as part of the registration application or determination process. Further details of this will be set out during the 2-year transition period.

### 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]

- 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]

### **Appeals against rejection of a biodiversity gain site application or non-determination of an application by the register operator**

The registration process and criteria are intended to set clear expectations for the register applicant. While most criteria will clearly be met or not met, some criteria will require some limited subjective judgement.

The UK Government intends to allow habitat providers to appeal a decision to reject a biodiversity gain site application where the applicant can provide evidence that the registration criteria have not been appropriately applied.

Successful appeals would result in the application being approved and the habitat enhancement being included on the register. We therefore intend to set out in regulation a maximum determination period for an appeal. Our assumption at this stage is that this should be within 28 days.

The UK Government intends to continue consultation with potential users of the registration system and launch a 'beta' version of the register<sup>49</sup> for voluntary use ahead of the requirement's commencement. We will provide further detail on the criteria and process for making and determining an appeal, including non-determination of an application by the register operator.

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<sup>49</sup> Based on current operating timelines, we anticipate launch of the beta version of the register in 2022.

### 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]

## Additionality

### Background

An important principle in impact compensation is ‘additionality.’ This is formally defined as:

‘a real increase in social value that would not have occurred in the absence of the intervention being appraised’<sup>50</sup>.

Mandatory biodiversity net gain will be addressed alongside other development and environmental policies. For example, a development might also be required to address green infrastructure policies. We are aware of uncertainty amongst practitioners about the extent to which enhancements undertaken in response to wider policies, legislation and markets can be counted towards a development’s biodiversity net gain calculation.

We have previously been clear that enhancements may not usually be counted if they are already being taken to fulfil a form of statutory obligation (for example, improving a designated feature of a Site of Special Scientific Interest into favourable condition<sup>51</sup>).

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<sup>50</sup> Green Book (2018) [The Green Book \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>51</sup> An exception to this is discussed in this consultation for the coastal and estuarine environment.

## Proposals

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

We want to make sure that our regulations, policy, and guidance set out a robust but fair interpretation of additionality principles. Provided that the enhancements in question meet all other requirements for biodiversity gain, we propose that:

- any measure delivered as part of a development<sup>52</sup> and within a development site boundary may be counted towards biodiversity net gain provided that the biodiversity metric recognises the uplift in biodiversity value. This includes on-site measures delivered to comply with a statutory obligation or policy (such as green infrastructure, sustainable drainage, or nutrient mitigation)
- mitigation and compensation measures for protected species may be counted towards a biodiversity net gain calculation but should not make up all of a development's biodiversity net gain. At least 10% of the gain should be delivered through separate activities which are not required to mitigate and compensate for protected species impacts. This principle will also apply to mitigation measures proposed to address off-site impacts on protected sites (for example, Suitable Alternative Natural Greenspaces, habitat creation to reduce nutrient pollution, or a line of trees to prevent light pollution into a protected site)
- adequate mitigation and compensation measures for any on-site and indirect impacts on statutory protected sites must be agreed with the decision maker. Once agreed these measures should be included in biodiversity metric calculations along with any loss of protected habitats caused by the development
- River Basin Management Plans set statutory objectives for the water environment, including ecological status objectives for waterbodies, as required by the Water Framework Directive Regulations 2017. Actions and measures within River Basin Management Plans can be used to achieve biodiversity net gain
- organisations that are subject to the Natural Environment and Rural Communities (NERC) Act 2006 duty on public authorities, which is being strengthened through the Environment Act, may generate and sell biodiversity units

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<sup>52</sup> Unless that part of the development site is a designated feature within a statutory protected site or irreplaceable habitat.



We will look to add consideration of these criteria in the biodiversity gain site register or biodiversity gain plan approval stages.

#### 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]

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

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

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]

d) achievement of River Basin Management Plan Objectives?

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

e) the strengthened NERC Act duty on public authorities?

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

#### **Enhancements in statutory protected sites for nature conservation**

The general approach for how the biodiversity net gain requirement applies to development in statutory designated sites is set out in Part 1 'development within statutory designated sites for nature conservation.' This section considers how the additionality principle applies to any enhancements proposed in statutory designated sites.

It can be argued that a strict application of the additionality principle would preclude the enhancement of statutory protected sites through biodiversity net gain. This is because many of these are already subject to requirements to maintain favourable condition or to bring them into favourable condition.

It may also be argued that the non-designated features of such sites could be enhanced in a way that is additional, particularly if there is no existing funding or plan to enhance them. There are some Sites of Special Scientific Interest that are designated for their geological

interest, which could be enhanced in ecological terms provided that this does not compromise the integrity or accessibility of the geological interest.

We are therefore considering whether to allow enhancement of the non-designated features of statutory protected sites (provided that doing so is not to the detriment of the interest feature) but are conscious that such a nuanced approach might introduce additional complexity or be difficult to deliver, monitor and enforce in practice.

We have heard from planning authorities that biodiversity net gain can provide an important source of funding to establish and enhance local wildlife sites and local nature reserves and propose that we do not interfere with this option and its potential long-term benefits.

We have heard from stakeholders that our position on the enhancement of statutory protected sites may need to distinguish between terrestrial, intertidal, and marine contexts.

A much greater proportion of the coastal, intertidal, and estuarine environment is subject to statutory protections for a range of species and habitats. Limiting ecological enhancements to the remaining undesignated area might result in missed opportunities for restoration projects.

We therefore propose that all habitats, including designated features of protected sites, in the intertidal zone (between the mean high and low water marks) or less than 2 km above the mean high water mark would be eligible for enhancement through biodiversity net gain. This would be subject to agreement from any relevant consultee body (such as consultees on an associated marine licence application) and provided that the proposal does not risk harming designated species or features.

#### **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]

### 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]

### Stacking of payments for environmental services

The market for biodiversity units will need to work alongside other environmental markets, such as nature-based carbon and nutrient trading and established markets for provisioning services, such as agricultural and forestry products, as well as UK Government-funded programmes such as the new schemes to reward environmental land management.

We recognise that one of the key uncertainties for landowners and managers is whether they will be able to combine multiple payments for different services or products provided from the same parcel of land.

We are minded to allow landowners and managers to combine payments for biodiversity units with other payments for environmental services<sup>53</sup> from the same parcel of land, provided they are paying for distinct, additional outcomes (for example, carbon sequestration and biodiversity benefits).

When identifying the appropriate combination of habitat features for a given parcel of land, landowners and managers should consider the relevant local nature priorities, such as those in Local Nature Recovery Strategies, as delivering the right kind of habitat in the right place will maximise the environmental outcomes.

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<sup>53</sup> By services we mean distinct environmental services (including supporting and regulating services) or benefits such as carbon sequestration, pollution mitigation, biodiversity, or recreation. This includes the forthcoming environmental land management schemes, wherever this can unlock a wider range of benefits or lead to better overall environmental outcomes. Agreements must be compatible, pay for different or additional outcomes and must not pay for the same outcome twice.

We believe this approach will help to support high quality projects by incentivising land managers to deliver a wide range of environmental benefits from a given parcel of land rather than only one key outcome.

We propose reviewing this approach as part of wider policy evaluation three years after commencement of the mandatory requirement.

#### 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]

## Statutory biodiversity credits

### Background

The Environment Act provides the basis for the UK Government to sell statutory biodiversity credits to developers. The purpose of this is to avoid unreasonable delays in the planning system in the event that developers are unable to deliver net gain on-site, off-site on other landholdings, or by purchasing biodiversity units on the market.

The UK Government expects but cannot guarantee that the market will meet demand for biodiversity units from day one. We therefore consider there is a need for statutory biodiversity credits to be available to developers as a last resort, at least in the early years of mandatory net gain.

However, the market analysis<sup>54</sup> published alongside this consultation highlighted a significant risk that the sale of statutory biodiversity credits by the UK Government could undermine the establishment of the market.

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<sup>54</sup> Eftec (2021) *Biodiversity Net Gain: Market Analysis Study*, NR0171 [www.randd.defra.gov.uk](http://www.randd.defra.gov.uk)

The proposals set out in this consultation seek to mitigate that risk and ensure that the sale of statutory biodiversity credits and investment of associated revenues is undertaken in a way that supports, and does not conflict with, the establishment of a functioning market for biodiversity units.

In late 2020, we initiated a credit pilot involving nine projects from around England. This pilot was delivered by Natural England and, alongside experience from other schemes, will guide our approach to credit investment.

## **Proposals**

### **Use of statutory biodiversity credits**

Statutory biodiversity credits will be sold by the UK Government to developers as a last resort, where developers can demonstrate as part of the net gain plan that they are unable to achieve net gain on-site, off-site on other landholdings or by purchasing biodiversity units on the market.

Further guidance on how the need for credits should be determined and demonstrated will be published during the transition period to support decision-making by developers and planning authorities.

### **Credit price and sales**

The UK Government will undertake a credit price review to confirm how the price for statutory biodiversity credits will be set, and an initial credit price will be published in advance of biodiversity net gain becoming mandatory.

Our intention is to set a credit price which is clear, simple, and certain for developers, and achieves an appropriate balance between:

- offering developers a cost-effective way to achieve net gain where the available on-site or off-site options are insufficient, while reinforcing the use of credits as a last resort
- driving growth in the biodiversity unit market, so that this can become, and endure as, the principal means of achieving off-site biodiversity gains
- raising sufficient funds to cover the administrative costs of the credits scheme and deliver the intended biodiversity outcomes, with at least one biodiversity unit being created for every credit sold

We will undertake future reviews of the credit mechanism and credit price, to ensure that it remains appropriate. We will be intentionally uncompetitive with the biodiversity unit market, and we aim to minimise the use of statutory biodiversity credits and phase them out at the earliest opportunity, once the biodiversity unit market has matured and we are confident that there is no longer a need for them.

Developers will be able to purchase credits at a set price without significant delay and discharge the corresponding biodiversity net gain liability on purchase. Credit sales will be facilitated by an accessible and user-friendly digital sales platform.

Our intention is for the sales platform to be simple and cost-effective to administer, designed to avoid and manage the risk of fraud, and able to capture the data required to discharge reporting obligations on the Secretary of State under the Environment Act.

We have considered several alternative approaches to credit sales, including payment for credits upfront, payment upfront with an optional refund in the event that the developer can secure additional on-site or off-site units, or deferred payment to allow developers more time to secure off-site units on the market.

Allowing optional refunds or deferred payments may provide more time for the market to scale up to meet demand and reduce the need for the UK Government to act as a seller of last resort. However, these benefits could be outweighed by the risks of delayed delivery of the compensatory habitat, increased difficulty of enforcement in the case of deferred payments, and the additional administrative burden associated with processing refunds or managing contracts for deferred payments.

For these reasons, our current preferred approach is for developers to purchase credits prior to final approval of the biodiversity gain plan and discharge of the pre-commencement condition. Nevertheless, we welcome views from stakeholders on our preferred approach and any suitable alternatives.

#### 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]

- 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]

### 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]

### 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]

## Credit investment

Revenue from credit sales will be invested in strategic habitat creation and enhancement which delivers long-term environmental benefits and is aligned with Local Nature Recovery Strategy priorities.

Underpinned by robust ecological criteria, credit investment will seek to address specific gaps in the market in terms of the types and locations of habitat which are impacted by development but unavailable on the market, delivering higher distinctiveness habitats that ensure an overall net gain for biodiversity is achieved.

Habitat creation or enhancement for credit investment will be expected to meet at least the same standards as other on-site and off-site biodiversity gains.

Where possible, the geographic distribution of credit investment is intended to broadly reflect the distribution of development for which statutory biodiversity credits are purchased. Where appropriate, investment will seek to support exemplar projects that foster partnerships and deliver wider ecosystem services.

An agile approach will be taken to credit investment, which adapts and responds to the emerging biodiversity unit market, as well as to broader environmental, policy and

economic changes. Our approach will be designed to minimise the time lag between receipt of credit payments and delivery of the associated habitat.

Credit investment will demonstrate clear additionality and be coherently aligned with other UK Government policies and programmes. This will be supported by transparent and robust monitoring, evaluation and reporting, and our intention is for credit investment sites to be included in the biodiversity gain site register.

We will publish an annual review of credit investment which shows which types of projects have been funded in which areas of England, so that developers and other interested parties are able to see the outcomes.

For practical reasons, we do not propose to make a direct, traceable link between an individual development that has purchased credits and specific sites that have received that 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]

## Reporting, evaluation, and monitoring

In the context of biodiversity net gain, evaluation and monitoring can be considered:

- at a project level – monitoring the design and delivery of on-site and off-site biodiversity net gain outcomes against the proposals made in biodiversity gain plans
- at a policy level – to evaluate how biodiversity net gain is being delivered overall, and to assess whether project level outcomes are cumulatively delivering the intended benefits of the policy (environmental, social, and economic). This will inform any adjustments to the policy and metric over time



## **At a project level**

### **Background**

Monitoring outcomes at a site level will help to inform adaptive habitat management (recognising that nature will sometimes have different plans to those recorded in the biodiversity metric) and ongoing maintenance activities to ensure that biodiversity gains can be delivered.

The transparency built into our proposals for the biodiversity gain site register and biodiversity gain plans will help to make commitments clearer and facilitate enforcement where appropriate.

We recognise that capacity and expertise is essential, alongside the right powers, policy and guidance, for planning authorities to enforce biodiversity gain requirements.

### **Proposals**

We will be clear that planning authorities should set any specific and proportionate monitoring requirements as part of planning conditions and obligations used to secure off-site or significant on-site habitat enhancements. Where enhancements are secured with conservation covenants, the responsible body should ensure that appropriate monitoring proposals are also secured.

It will be the landowner or developer's responsibility to ensure monitoring and reporting obligations are fulfilled, or adequately delegated to another body (with necessary funding), to the specifications set out in the biodiversity gain plan. Natural England are currently scoping whether accreditation and earned recognition approaches would help to focus enforcement and scrutiny of assessments.

The number of monitoring assessments will depend on the habitat type and extent, but a typical schedule for a medium sized habitat creation project might result in reports for years 2, 5, 10, 20 and 30.

It is important that monitoring is proportionate, and we recognise that there should be considerable scope for discretion and expert opinion when monitoring is agreed between habitat providers, planning authorities and responsible bodies.

As a minimum, monitoring reports should include a summary of habitat type, extent, and condition (with a comparison where applicable against the expected condition proposed in the biodiversity gain plan). We will aim to provide guidance on monitoring that provides

clear benchmarks in terms of effort and frequency, but which allows room for discretion in how the monitoring is undertaken and what form any assessment takes.

Monitoring reports should be secured so that they are submitted to the planning authority (always), register operator (if off-site habitat is included) and the relevant responsible body (if a conservation covenant is used).

Natural England are working on a standardised process for habitat management and monitoring. We will ensure data collection is standardised as far as possible across the register process, biodiversity gain plan, and monitoring reports, whilst avoiding the expectation that these should be lengthy or burdensome documents.

Failure to deliver, or attempt to deliver, biodiversity net gain outcomes which are secured with conditions or limitations (subject to which planning permission is granted) can result in enforcement action by the planning authority. Planning authorities have a range of existing planning enforcement tools at their disposal, and the Environment Act includes mechanisms to ensure commitments through conservation covenants are adhered to<sup>55</sup>.

We are considering changes to guidance to support the effective enforcement of on-site biodiversity gains and are interested in views on whether this may reduce the incentive for management organisations or developers to under-deliver against proposals. We are also interested in views on the scope of this guidance, particularly given the long-term nature of biodiversity gains.

We understand from stakeholders that capacity and transparency are as important as the legal powers available for effective enforcement and expect that the transparent biodiversity gain plan process (including completed biodiversity metric assessments) and new burdens funding for planning authorities will help in this respect.

We are also considering, in light of recent evaluation of the use of biodiversity and species data<sup>56</sup>, how we might make more biodiversity net gain monitoring information publicly accessible. This may be through a requirement or incentive to share the biodiversity gain

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<sup>55</sup> Conservation covenants will be registered as local land charges to ensure that they bind successor landowners to the terms of the agreed biodiversity enhancements

<sup>56</sup> [Mapping the Species Data Pathway: Connecting species data flows in England - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/mapping-the-species-data-pathway)

plan and monitoring report data with local environmental records centres. Greater digitisation of planning processes will increase transparency and provide opportunities to capture and share data more easily.

### 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]

### 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]

## At a policy level

### Background

In the previous biodiversity net gain consultation, we said we would plan for evaluation and monitoring of the policy. We have already commissioned and received work that will help to define the key outcomes that should be monitored through biodiversity net gain. We are now continuing with our plans to design and implement a policy-level evaluation programme.

Recognising that mandatory biodiversity net gain is a complex proposal and a new mechanism which will evolve in considering, we have intentionally created opportunities to refine the policy and legislation in response to evaluation findings.

For example, we have drafted the Environment Act provisions to allow for updates to the biodiversity metric, reviews of the minimum period for which biodiversity gain sites are secured, and amendments to be made to the required net gain percentage.

## Proposals

Several biodiversity net gain mechanisms and wider policies will support the policy-level monitoring of biodiversity net gain outcomes:

- the biodiversity gain site register, which will provide a publicly accessible record of proposed off-site<sup>57</sup> enhancements
- Biodiversity Reports published every five years by planning authorities and other designated public authorities
- clearer, more standardised, reporting of habitat losses and gains in biodiversity gain plans
- enhancement monitoring and habitat survey data, coordinated by planning authorities, responsible bodies, and local environmental records centres, which can provide data that will indicate the extent of success or failure of particular habitat enhancements
- the annual report on statutory biodiversity credits investment

This information, along with information collected through any UK Government-commissioned assessment samples undertaken as part of the evaluation and monitoring programme, will be valuable not only in assessing the function of biodiversity net gain policy, but also in assessing the ecological success of various project-level interventions, mitigation proposals and habitat management plans. This may contribute to future guidance on ecological mitigation practice and help to address reported evidence gaps<sup>58</sup>.

The Environment Act strengthens the current Natural Environment and Rural Communities (NERC) Act 2006 biodiversity duty on public authorities (including planning authorities), so that they will have to periodically consider the action they can take to conserve and enhance biodiversity, and then take that action.

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<sup>57</sup> We are exploring the potential for this register to capture on-site assessments and plans too, without creating significant new process burdens for developers or planning authorities.

<sup>58</sup> Evidence shortfalls in the recommendations and guidance underpinning ecological mitigation for infrastructure developments (2021) <https://besjournals.onlinelibrary.wiley.com/doi/full/10.1002/2688-8319.12089>

To support this strengthened duty, we are introducing a reporting requirement whereby all local authorities (excluding parish councils), local planning authorities and other designated authorities must publish Biodiversity Reports every 5 years.

These reports must contain a summary of the authority's past and planned action, alongside other specified quantitative data. We are consulting separately on which other designated authorities should be required to report and the wider quantitative data that should be included in the reports in a consultation on the Strengthened Biodiversity Duty to be launched early this year.

The Environment Act also requires that local planning authorities include in their Biodiversity Reports 'information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period'. Proposed biodiversity net gain data requirements to be collected from planning authorities under the NERC Act duty are set out in full in Annex C, and in brief, comprise:

- quantity, composition, and location of expected biodiversity gains (or losses), split by on-site, off-site and gains achieved through credits
- number of developments impacting irreplaceable habitat, protected sites, and protected species
- results of biodiversity net gain monitoring
- actions taken by the planning authority to carry out biodiversity net gain planning functions during the reporting period
- plans for carrying out biodiversity net gain planning functions over the next reporting period

#### **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]

### 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]

- 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]

# Glossary

**Additionality:** The characteristic of an intervention denoting a real increase in social value that would not have occurred in the absence of the intervention being appraised.

**The biodiversity gain objective:** The term used in the Town and Country planning Act 1990 as amended by the Environment Act, to describe biodiversity net gain.

**Biodiversity metric 3:** Biodiversity metric 3 updates and replaces the beta biodiversity metric 2.0 published in 2019. It is a biodiversity accounting tool that can be used for the purposes of calculating biodiversity net gain.

**Biodiversity net gain or biodiversity gain:** The term ‘biodiversity gain’ can be used interchangeably with ‘biodiversity net gain’ or can be used to mean the enhancements or gains which are delivered as part of meeting an overall biodiversity net gain objective.

**Biodiversity unit:** A biodiversity unit is the ‘currency’ of the biodiversity metric. A unit represents a combined measure of habitat distinctiveness, area, and condition.

**Brownfield land:** Land which is or was occupied by a permanent structure including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

**CIEEM:** Chartered Institute for Ecology and Environmental Management.

**Conservation covenants:** A legally binding, voluntary agreement to conserve the natural or heritage features of the land.

**Cumulative impacts:** Additional changes caused by a proposed development in conjunction with other developments or the combined effect of a set of developments.

**Designated features (of statutory protected sites):** The elements of a protected site for which the site was designated.

**Direct impacts:** Direct impacts occur through direct interaction of an activity with an environmental, social, or economic component.

**Ecosystem services:** The services provided by natural capital, such as pollination and biomass, which lead to benefits to society.

**Environmental impact assessment:** A procedure to be followed for certain types of project to ensure that decisions are made in full knowledge of any likely significant effects on the environment.

**Environmental net gain:** In short, this means improving all aspects of environmental quality through a scheme or project. Achieving environmental net gain means achieving biodiversity net gain first and going further to achieve increases in the capacity of affected natural capital to deliver ecosystem services and make a scheme's wider impacts on natural capital positive.

**Green infrastructure:** A network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity.

**In-combination impacts:** Impacts that occur between different environmental topics within the same project.

**Indirect impacts:** Indirect impacts on the environment are those which are often produced away from the project site or as a result of a complex impact pathway.

**Irreplaceable habitat:** Defined in the NPPF as: Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.

**Local Nature Recovery Strategies:** These will support local action by consistently mapping important existing habitats and identifying opportunities to create or restore habitat. Developed through a collaborative approach, LNRs will also support the delivery of a Nature Recovery Network by acting as a key tool to help local partners better direct investment and action that improves, creates and conserves wildlife-rich habitat.

**Local plan:** A plan for the future development of a local area, drawn up by the local planning authority in consultation with the community. In law this is described as the



development plan documents adopted under the Planning and Compulsory Purchase Act 2004. A local plan can consist of either strategic or non-strategic policies, or a combination of the two.

**Local planning authority or planning authority:** The public authority whose duty it is to carry out specific planning functions for a particular area. All references to local planning authority include the district council, London borough council, county council, Broads Authority, National Park Authority, the Mayor of London and a development corporation, to the extent appropriate to their responsibilities.

**Minor development:** Minor development being defined (i) for residential: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare, or where the number of dwellings to be provided is not known, a site area of less than 0.5 hectares; (ii) For non-residential: where the floor space to be created is less than 1,000 square metres OR where the site area is less than one hectare.

**Mitigation hierarchy:** The principle that environmental harm resulting from a development should be avoided (through locating development where there will be less harmful impacts), adequately mitigated, or, as a last resort, compensated for.

**National Planning Policy Framework (NPPF):** This sets out the UK Government's planning policies for England and how these are expected to be applied.

**National Policy Statements:** Produced by the government. They give reasons for the policy set out in the statement and must include an explanation of how the policy takes account of government policy relating to the mitigation of, and adaptation to, climate change.

**Natural capital:** The elements of nature that directly or indirectly produce value to people, including ecosystems, species, freshwater, land, minerals, the air, and oceans, as well as natural processes and functions.

**Nature Recovery Network:** An expanding, increasingly connected, network of wildlife-rich habitat supporting species recovery, alongside wider benefits such as carbon capture, water quality improvements, natural flood risk management and recreation. It includes the existing network of protected sites and other wildlife rich habitats as well as and landscape or catchment scale recovery areas where there is coordinated action for species and habitats.

**Nutrient mitigation:** Measures to remove nutrient pollution from the catchments of Habitat Sites to avoid adverse effects by mitigating for additional nutrient loads from projects (including development) or planning impacts on designated sites by neutralising the

additional nutrient burden that will arise from the proposed plan or project, achieving a net zero change at the designated sites in a timely manner.

**Planning condition:** A condition imposed on a grant of planning permission (in accordance with the Town and Country Planning Act 1990) or a condition included in a Local Development Order or Neighbourhood Development Order.

**Planning obligation:** A legal agreement entered into under section 106 of the Town and Country Planning Act 1990 to mitigate the impacts of a development proposal.

**Priority habitats and species:** Species and Habitats of Principal Importance included in the England Biodiversity List published by the Secretary of State under section 41 of the Natural Environment and Rural Communities (NERC) Act 2006.

**Protected species:** Many species of plants and animals in England and often their supporting features and habitats are protected by law.

**Ramsar sites:** Wetlands of international importance designated under the 1971 Ramsar Convention.

**Site of Special Scientific Interest:** Sites designated by Natural England under the Wildlife and Countryside Act 1981.

**Small Sites Metric (SSM):** A simplified version of biodiversity metric 3. It has been specifically designed for use on small development sites where the project chooses to do so.

**Special Areas of Conservation:** Areas defined by regulation 3 of the Conservation of Habitats and Species Regulations 2017 which have been given special protection as important conservation sites.

**Special Protection Areas:** Areas classified under regulation 15 of the Conservation of Habitats and Species Regulations 2017 which have been identified as being of international importance for the breeding, feeding, wintering or the migration of rare and vulnerable species of birds.

**Statutory protected sites:** If a site of nature conservation importance has 'Statutory Protection', it means that it receives protection by means of certain legislation in recognition of its biodiversity and / or geological value.

**Strategic environmental assessment:** A procedure (set out in the Environmental Assessment of Plans and Programmes Regulations 2004) which requires the formal environmental assessment of certain plans and programmes which are likely to have significant effects on the environment.

**Suitable Alternative Natural Greenspaces:** Name given to green space that is of a quality and type suitable to be used as mitigation for (typically recreation pressure) impacts to Special Areas of Conservation and Special Protection Areas.

**Sustainable drainage:** Sustainable drainage systems slow the rate of surface water runoff and improve infiltration, by mimicking natural drainage, in both rural and urban areas.



## Annex A: Other policies and objectives which interact with biodiversity net gain

| Policy or objective                          | What does it do?   | How does it interact with biodiversity net gain?   |
|--|--|--|
| <b>Conservation covenants</b>                | <p>Conservation covenants are a new, voluntary, and standalone legal mechanism that can secure long term conservation management obligations on land even if the land is sold.</p> <p>For more information see the <a href="#">2019 Government response to the public consultation on conservation covenants</a></p>   | <p>Conservation covenants can be used to secure habitat enhancements for biodiversity gain.</p> <p>We expect this will make them a valuable tool for local authorities and developers to ensure that compensatory habitats are maintained in the long term.</p>  |
| <b>Environmental Land Management Schemes</b> | <p>Our 3 new environmental land management schemes will help achieve our goals for thriving plants and wildlife by paying for measures such as habitat creation and restoration as well as species management actions.</p> <p>For more information, see the recently published <a href="#">Payment Principles</a> and the <a href="#">Agriculture Transition Plan June 2021 Progress Update</a>.</p> | <p>The environmental land management schemes will work alongside mandatory biodiversity net gain as another source of income to enhance biodiversity and the wider environment.</p> <p>We will provide more detailed guidance for landowners who are considering options across biodiversity net gain and the environmental land management schemes at the right time.</p> |
| <b>Environmental Net</b>                     | <p>Environmental net gain is an approach to development that leaves the natural environment in a measurably better state</p>   | <p>Delivering biodiversity net gain through development can improve the ability of the</p>   |

| Policy or objective                     | What does it do?   | How does it interact with biodiversity net gain?  |
|---|--|---|
| <b>Gain</b>                             | <p>than it was beforehand.</p> <p>It was set out as a vision in the 25 Year Environment Plan, and biodiversity net gain is the first step to achieving it.</p> <p>Environmental net gain means building on biodiversity net gain and going further to achieve increases in the capacity of affected natural capital to deliver ecosystem services and make a scheme's wider impacts on natural capital positive.</p> | <p>natural environment to provide a number of wider benefits for society, such as cleaner air and water, open green spaces, and storing carbon.</p> <p>Tools such as the <a href="#">The Environmental Benefits from Nature Tool</a> (EBNT) (formerly the Eco-Metric) which can be used alongside biodiversity metric 3, will enable some of these wider natural capital impacts of development to be understood.</p> <p>The EBNT may be used when delivering biodiversity net gain to facilitate better design.</p> <p>Developers or planning authorities may wish to understand the wider natural capital implications of land use change and how it might affect the benefits that society enjoys from nature.</p> <p>There are no immediate plans to legislate for use of the tool.</p> |
| <b>Local Nature Recovery Strategies</b> | <p>Local Nature Recovery Strategies are locally produced spatial planning frameworks for nature, informed by national maps and priorities.</p> <p>Each strategy will, for the area it covers, agree priorities for nature's recovery, map the most valuable existing areas for nature and map specific proposals for creating or improving</p>   | <p>The biodiversity metric that will be used for mandatory biodiversity net gain already includes an incentive to deliver habitats in line with Local Nature Recovery Strategies.</p> <p>Delivery of each Local Nature Recovery Strategies will be driven by measures in the</p>  |

| Policy or objective                         | What does it do?  | How does it interact with biodiversity net gain?  |
|---|---|---|
|   | <p>habitat for nature and wider environmental goals.</p> <p>A separate <a href="#">public consultation on the implementation of Local Nature Recovery Strategies</a> ran from 10 August to 2 November 2021.</p>   | <p>Environment Act, including biodiversity net gain.</p>  |
| <p><b>Nature Recovery Network (NRN)</b></p> | <p>The NRN will be an expanded, improved and connected network of places for nature that is rich in wildlife and more resilient to climate change.</p> <p>At the core of the NRN will be our existing best areas for nature, including Sites of Special Scientific Interest. We will also create or restore 500,000 hectares of additional wildlife-rich habitat beyond these existing areas.</p> <p>For more information see the <a href="#">Nature Recovery Network policy paper</a>.</p> | <p>To deliver the NRN, we are taking a planned approach with three components:</p> <ol style="list-style-type: none"> <li>1. we are developing spatial planning tools to effectively target action and investment for nature (Local Nature Recovery Strategies)</li> <li>2. we are integrating the NRN with funding streams that will incentivise the restoration and creation of habitats, including biodiversity net gain</li> </ol> <p>we are supporting partnerships to use those tools and incentives to deliver action for nature</p> |
| <p><b>Species abundance target</b></p>      | <p>We have amended the Environment Act to require an additional legally binding target on species abundance for 2030 to halt the decline of nature.</p> <p>For more information see the <a href="#">Nature for people, climate and wildlife policy paper</a>.</p>   | <p>Creating new and better habitats through biodiversity net gain will contribute towards limiting biodiversity loss and accelerating its recovery, thereby supporting the meeting of the new species abundance target.</p>   |
| <p><b>Species conservation</b></p>          | <p>Species Conservation and Protected Site Strategies are designed to provide a more strategic approach to the complex challenge of protecting and restoring species and</p>  | <p>The strategies will feed into Local Nature Recovery Strategies, will support planning authorities and other public authorities in</p>  |

| Policy or objective                             | What does it do?  | How does it interact with biodiversity net gain?   |
|---|---|--|
| <b>strategies and protected site strategies</b> | <p>habitats.</p> <p>Both will avoid the need to identify project-specific solutions which can be difficult, time consuming and costly to implement.</p> <p>The Environment Act places a duty on planning authorities to cooperate with Natural England, and other planning authorities and public bodies, in the establishment and operation of the strategies.</p> <p>For more information see the <a href="#">Nature and conservation covenants (parts 6 and 7) policy paper</a>.</p> | <p>discharging their duty in respect of biodiversity and developing Local Plans, and they will complement plans for biodiversity net gain.</p>   |
| <b>Strengthened biodiversity duty</b>           | <p>Strengthening the biodiversity duty in the Natural Environment and Rural Communities (NERC) Act 2006 will ensure public authorities consider how they can enhance biodiversity.</p> <p>A consultation on the Strengthened Biodiversity Duty will launch early this year.</p>   | <p>Public authorities subject to the duty, including planning authorities, will need to report on how they are considering and enhancing biodiversity.</p> <p>For planning authorities, this must include references to their delivery and support of biodiversity net gain.</p> <p>Public bodies might wish to enhance habitat on their own land in response to this duty and, should this require funding, they may sell the generated 'biodiversity units' to fund the enhancement.</p> |
| <b>Planning reform</b>                          | <p>The Planning for the Future White Paper published last year proposed wider reforms to the planning system and was clear that any reformed planning system will have improving</p>  | <p>Mandatory biodiversity net gain is an example of an outcomes-focused model for environmental protection and enhancement</p>   |



| Policy or objective | What does it do?   | How does it interact with biodiversity net gain?  |
|---------------------|--|---|
|                     | <p>biodiversity as a core objective.</p> <p>The Government will set out the next steps for planning reform, and how it will contribute to environmental improvement, in due course.</p> <p>In the National Infrastructure Strategy, the UK Government committed to undertaking a review of the Nationally Significant Infrastructure Project (NSIP) regime as part of a cross-government reform programme known as Project Speed. As part of this programme, we have set an ambition that by September 2023 some projects entering the system will be able to go through the NSIP process in up to half the time than at present. Through Project Speed, we aim to improve the quality and fairness of the NSIP process and achieve better and greener outcomes.</p> | <p>and will support the wider planning reforms, which are intended to make development better, faster and greener.</p> <p>The Department for Levelling Up, Housing and Communities (DLUHC) is working closely with Defra to develop its wider reforms in a way which supports the commitment to biodiversity net gain policy.</p> |



## Annex B: Biodiversity gain plan template (working draft)

It is important to note this is not the final version of the plan. The purpose of the biodiversity gain plan is to inform the relevant planning authority of the biodiversity gain outcome. If a development is within scope of the statutory biodiversity gain condition, this document must be completed and submitted to the relevant planning authority. Submission of a biodiversity gain plan must always be accompanied by a completed biodiversity metric.

Data requirements set out in this template are provisional and are based on a typical route to planning permission. We will be working closely with stakeholders during the transition period to ensure that the biodiversity gain plan is proportionate and does not cause undue burden on developers, practitioners, or planning authorities.

We aim to produce a more concise version of the biodiversity gain plan template for developments using the **small sites metric**.

### Section A: Status of biodiversity gain plan

| Status   | Purpose   | Relevant sections to be completed prior to submission for each status  |
|--|---|--|
| Biodiversity Gain Information                                  | To inform the planning application  | A, B, C, D and E – <b>mandatory</b><br><br>F, G, H and I – <b>optional</b> , applicant should aim to complete as far as possible |
| Biodiversity Gain Plan   | For approval by the relevant planning authority before development can commence | A, B, C, D, E, F, G and H – <b>mandatory</b><br><br>I – <b>optional</b> , applicant should aim to complete as far as possible    |
| Please select the status which best describes this submission: |   | Biodiversity Gain Information / Biodiversity Gain Plan   |

## Section B: Confirmation of submission of supporting documents

| Document (note that not all documents listed will be relevant for all submissions)             | File name (and web link, where available)   |
|--|---|
| Completed relevant biodiversity metrics  |   |
| Habitat Management and Monitoring Plan (where applicable)                                      |   |
| Credit Receipt References (or alternative proof) (where applicable)                            |   |
| Any more relevant attached documents or tools used in support of biodiversity net gain design? | <p>Examples may include:</p> <ul style="list-style-type: none"> <li>• supporting species lists and habitat survey reports and maps</li> <li>• landscaping plans</li> <li>• bespoke compensation for irreplaceable habitats</li> <li>• Section 106 agreement wording if securing an offset site via the planning authority</li> <li>• covenants (or equivalent legal contracts) securing any unreceipted biodiversity net gain commitments</li> <li>• details of future ownership and stewardship</li> </ul> |

## Section C: Summary of proposed biodiversity net gain

| Biodiversity unit type | Baseline units |          | Post-development units     |                               |  | % net gain |
|------------------------|----------------|----------|----------------------------|-------------------------------|--|------------|
|                        | On-site        | Off-site | On-site (development site) | Off-site (or market-provided) | Statutory biodiversity credits (government-provided) |            |
| Area habitat           |                |          |                            |                               |  |            |

|  |  |  |  |  |  |  |
|--|--|--|--|--|--|--|
| Linear habitat – rivers and streams          |  |  |  |  |  |  |
| Linear habitat – hedgerows or lines of trees |  |  |  |  |  |  |

## Section D: Project information and contact details

| D1: Project information   |  |
|---|--|
| Site or development name  |  |
| Site or development location  |  |
| Red line site boundary or boundaries for development site and off-site delivery |  |
| Planning authority  |  |
| Planning register reference (if available)                                      |  |
| Date of submission of biodiversity gain plan or biodiversity gain information   |  |
| D2: Details of the person responsible for completing the net gain plan          |  |
| Name  |  |
| Organisation  |  |
| Statement of competency   |  |
| See biodiversity metric 3 User Guide for details of competency requirements     |  |

## Section E: On-site habitats

| E1: Site information   |
|--|
| Provide a brief description of existing (pre-development) habitat on site                      |
| As a minimum, this should include habitat types  |
| Provide with a brief description of planned (post-development) habitat creation or enhancement |
| As a minimum, this should include habitat types  |

| <b>E2: Baseline habitat data used to inform metric</b>  |  |
|---|--|
| If using the Small Sites Metric (SSM), confirm that all criteria for use of the SSM have been met (as set out in the SSM) and state on-site survey date   | For example, "09/11/2020, yes SSM criteria met"  |
| If using the main metric, please provide: <ul style="list-style-type: none"> <li>• baseline habitat survey reference</li> <li>• survey date</li> <li>• details of any survey constraints</li> </ul> |  |
| What local plans or strategies have been used to inform strategic significance multipliers within metric? (Required for SSM and main metric)  | For example, Local Plan, Local Nature Recovery Strategies, Green Infrastructure strategies |
| <b>E3: Metric results – on site</b>   |  |
| Do metric results show that at least the minimum percentage net gain requirement has been achieved on site (for area, hedgerow, and watercourse habitat types)?                                     | Yes/No   |
| Set out justification if metric has triggered unresolved error messages or if you have deviated from metric guidance  |  |
| Is further habitat enhancement needed off-site to secure net gain? If yes, complete Section F   | Yes/No   |

## Section F: Off-site habitat enhancement (if applicable)

| <b>F1: Site information</b>  |  |
|--|--|
| Register reference for off-site biodiversity net gain component      |  |
| Brief description of existing habitat off-site                       |  |
| As a minimum, this should include habitat types                      |  |
| Brief description of planned habitat creation / enhancement off-site |  |

|  |  |
|--|--|
| As a minimum, this should include habitat types  |  |
| <b>F2: Off-site baseline habitat data used to inform metric</b>  |  |
| Please provide: <ul style="list-style-type: none"> <li>• baseline habitat survey reference</li> <li>• survey date</li> <li>• details of any survey constraints</li> </ul>        |  |
| What local plans or strategies have been used to inform strategic significance multipliers?  | For example, Local Plan, Local Nature Recovery Strategies, Green Infrastructure strategies |
| <b>F3: Off-site habitat creation / enhancement plans used to inform metric</b>   |  |
| Are off-site habitat creation / enhancement proposals already secured?   |  |
| Will there be a significant delay (more than a year) between habitat loss and habitat creation / enhancement works?  |  |
| Confirmation that off-site Habitat Management and Monitoring Plan and appropriate conservation covenant or contract has been incorporated into the overall biodiversity net gain | Yes/No   |
| Habitat Management and Monitoring Plan appended to the biodiversity net gain plan  | Yes/No   |
| Brief description of habitats being created / enhanced off-site  |  |
| Brief description of post-development off-site habitats to meet local policy and national policy not included within metric calculations   |  |
| <b>F4: Metric results – off-site</b>   |  |
| Confirmation that metric calculation spreadsheet (in its entirety, not a summary or screenshots) has been appended to biodiversity gain plan                                     | Yes/No   |

| <b>F5: Credits (only to be used if on-site or off-site (via purchase of units from registered site) net gain is not possible)</b>   |        |
|---|--------|
| Have statutory credits been purchased?  | Yes/No |
| If yes, please state number of credits purchased, provide Credit Receipt References (or alternative proof), and attach receipt  |        |
| Credits evidence log  |        |
| <p>Developers applying for government statutory credits must produce an evidence log in their biodiversity gain plan. The evidence log must explain steps taken and decisions made in attempt to achieve biodiversity net gain on site or locally through a land provider, explaining why they have arrived at using credits as a last resort</p> |        |

### **Section G: Wider biodiversity net gain obligations (aside from measurable net gain)**

| <b>G1: Adherence to the mitigation hierarchy</b>  |        |
|---|--------|
| Steps taken to avoid and / or minimise adverse biodiversity impacts   |        |
|   |        |
| <b>G2: Irreplaceable habitat</b>  |        |
| Is any irreplaceable habitat present on the development site?   | Yes/No |
| <p>If yes, please confirm that you have separately provided the following to the relevant planning authority:</p> <ul style="list-style-type: none"> <li>• information on the type and extent of irreplaceable habitat within the on-site area</li> <li>• justification for these impacts</li> <li>• steps taken to avoid / minimise these</li> </ul> |        |



|  |               |
|--|---------------|
| <p>impacts</p> <ul style="list-style-type: none"> <li>• an appropriate bespoke compensation strategy</li> </ul>  |               |
| <p><b>G3: Designated sites for nature conservation</b></p>   |               |
| <p>Are any designated sites for nature conservation present within the development site?</p>   | <p>Yes/No</p> |
| <p>If yes, please confirm that you have separately provided the following to the relevant planning authority:</p> <ul style="list-style-type: none"> <li>• site name, designation type, habitat / feature type and extent of impact</li> <li>• justification for these impacts</li> <li>• steps taken to avoid / minimise these impacts</li> <li>• an appropriate bespoke compensation strategy</li> </ul> |               |
| <p><b>G4: Protected species</b></p>  |               |
| <p>Are any protected species directly impacted by the development?</p>   | <p>Yes/No</p> |
| <p>If yes, please confirm that you have separately provided the following to the relevant planning authority:</p> <ul style="list-style-type: none"> <li>• information on the relevant species and extent of impacts</li> <li>• justification for these impacts</li> <li>• steps taken to avoid / minimise these impacts</li> <li>• an appropriate bespoke compensation strategy</li> </ul>                |               |

| <b>G5: Net gain legacy</b>   |   |
|--|---|
| Confirmation that management of off-site and significant on-site habitat enhancements has been secured for a minimum of 30 years   | Yes/No  |
| <p>Briefly describe mechanism for securing management and the duration of these agreements</p> <p>Append legal agreement or, if not available at point of submission, letter of confirmation from habitat provider</p>   | <p>For example, through contract, planning obligation, conservation covenant, endowment / sinking fund etc.</p> |
| <b>G6: Habitat degradation</b>   |   |
| <p>Confirmation that, to the best of the applicant's knowledge, any habitat degradation of pre-development habitats since 30 January 2020 has been accounted for in the baseline</p> <p>If not, has the action causing degradation been approved by planning permissions? If so, state the relevant consenting body and reference number</p> |   |

## **Section H: Monitoring and Reporting**

| <b>H1: Monitoring</b>  |
|--|
| Provide details of mechanisms to ensure any planning authority monitoring and reporting requirements are satisfied |
| For example, when monitoring and reporting will be provided and who outcomes will be shared with                   |

## Section I: Additional information

| I1: Limitations and assumptions  |        |
|--|--------|
| Highlight any additional limitations and assumptions made during the biodiversity net gain process (beyond survey constraints outlined in sections E & F)  |        |
|  |        |
| I2: Biodiversity net gain good practice  |        |
| Does the project adhere to British Standard BS8683?  | Yes/No |
| Opportunity to highlight consideration of / adherence to any additional good practice standards for biodiversity net gain  |        |
|  |        |
| I3: Sharing data   |        |
| Will you share relevant ecological survey data (baseline and monitoring surveys) with the appropriate Local Environmental Records Centre (LERCs) or other body agreed with the planning authority?                         | Yes/No |
| If 'No', please explain why data has not been / will not be shared   |        |
| LERCs manage the evidence base for many planning authorities. It is important that the planning authority know why data have not been shared to add to the evidence base on their behalf, in case they wish to pursue this |        |

## Annex C: Reporting requirements

### Biodiversity net gain data to be collected from planning authorities under the Natural Environment and Rural Communities (NERC) Act 2006 duty

|   |
|---|
| <b>1. Gains and losses</b>  |
| <b>a) Expected</b>  |
| <p><u>i) Quantity of biodiversity gains</u><br/>           Total biodiversity value, in biodiversity units, consented within reporting period</p> <ol style="list-style-type: none"> <li>1) Baseline (on-site and off-site)</li> <li>2) Post development (on-site and off-site)</li> <li>3) Change (on-site and off-site)</li> <li>4) Units from credits</li> <li>5) Overall change in biodiversity units (including any units from credits)</li> </ol>   |
| <p><u>ii) Composition of biodiversity gains</u><br/>           Breakdown of habitats ('broad habitat types' as listed in biodiversity metric 3) from projects consented within reporting period, expressed in biodiversity units, area (ha), and length (km) for each habitat type</p> <ol style="list-style-type: none"> <li>1) Baseline</li> <li>2) Post-development</li> <li>3) Change</li> </ol>  |
| <p><u>iii) Location of off-site biodiversity gains</u><br/>           Number of off-site biodiversity units:</p> <ol style="list-style-type: none"> <li>1) Within planning authority area</li> <li>2) Within an adjacent planning authority area</li> <li>3) Outside and not adjacent to planning authority area</li> </ol>   |
| <p><u>iv) Number of development sites including sensitive areas</u><br/>           Number of developments impacting:</p> <ol style="list-style-type: none"> <li>1) Irreplaceable habitats</li> <li>2) Designated sites</li> <li>3) Protected species</li> </ol>   |
| <b>b) Resulting</b>   |
| <p><u>i) Results of monitoring biodiversity gains</u><br/>           Number of consented projects:</p> <ol style="list-style-type: none"> <li>1) Meeting monitoring requirements and delivering expected habitats set out in biodiversity gain plans and Habitat Management and Monitoring Plans</li> <li>2) Meeting monitoring requirements however, failing to deliver expected habitats set out in biodiversity gain plans and Habitat Management and Monitoring Plans</li> <li>3) Failing to meet monitoring requirements set out in biodiversity gain plans and Habitat Management and Monitoring Plans</li> </ol> |
| <b>2. Actions taken by the planning authority to carry out biodiversity net gain planning functions during the reporting period</b>   |
| <b>a) Qualitative</b>   |

|   |        |
|---|--------|
| i. Appropriate plan, strategy or policy document that enables use of biodiversity metric 3's strategic significance multiplier valid for the reporting period<br>(Link to document) | Yes/No |
| <b>b) Quantitative</b>  |        |
| i. Number of planning consents requiring net gain   |        |
| ii. Number of projects requiring net gain that have submitted a satisfactory biodiversity gain plan   |        |
| <b>3. Plans by the planning authority to carry out biodiversity net gain planning functions in the next reporting period</b>  |        |
| <b>a) Qualitative</b>   |        |
| i. Appropriate plan, strategy or policy document that enables use of the biodiversity metric's strategic significance multiplier valid for the reporting period                     | Yes/No |
| ii. Whether the planning authority is considering proposing its own sites to provide local biodiversity units   | Yes/No |
| iii. Whether the planning authority is considering acting as a broker between market unit providers and developers  | Yes/No |