

[Home](#) > [Consultation on Biodiversity Net Gain regulations and implementation](#)

[Department
for Environment
Food & Rural Affairs](#)

Consultation outcome

Government response and summary of responses

Updated 21 February 2023

Contents

- [1. Introduction and context](#)
- [2. Respondents](#)
- [3. Government response part 1: Defining the scope of the BNG requirement for Town and Country Planning Act 1990 development](#)
- [4. Government response part 2: Applying the biodiversity gain objective to different types of development](#)
- [5. Government response part 3: How the mandatory BNG requirement will work for Town and Country Planning Act 1990 development](#)
- [6. Annex A – Detailed summary of consultation responses](#)

compensation relative to the baseline habitat type. The planning authority must be satisfied that as a minimum, the mitigation or compensation plan meets requirements in relevant policy and guidance, and decisions on planning applications should be made in line with the National Planning Policy Framework (NPPF).

- Development on irreplaceable habitats, and consequent habitat losses and gains, are to be accounted for, either in a separate section of the biodiversity gain plan template, or a separate report to be submitted to the relevant planning authority alongside the biodiversity gain plan. A separate tab of the metric calculator tool must be completed which documents all irreplaceable habitat onsite. This will ensure losses of, and compensation for, irreplaceable habitat is recorded and communicated clearly
- We will state that statutory biodiversity credits must not be used to compensate for residual irreplaceable net losses resulting from development or land use change
- Alongside the standard requirement for a biodiversity gain plan, applications involving development on irreplaceable habitat should set out a robust summary statement of reasonable alternatives explored for the development that would avoid the loss of irreplaceable habitats and why they were not feasible

4. Government response part 2: Applying the biodiversity gain objective to different types of development

4.1 Phased development and development subject to subsequent applications

As we proposed for outline planning permissions, or development which is to be permitted in phases, we will require additional biodiversity gain information that sets out how biodiversity gain will be achieved across the whole site on a phase-by-phase basis. We will also require that such development should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase. We will proceed with this proposal, but have noted concerns about any overly rigid requirements for delivering higher biodiversity gains in early phases ('front-loading') and that it will be important to leave room for discretion for local planning authorities when it comes to deciding this. We are committed to ensuring an efficient, user-friendly process for phased development and will set out details about this process through secondary legislation and accompanying guidance.

Changes to minerals permissions and varying existing permissions

We recognise concerns raised about our proposal that Reviews of Old Minerals Permissions (ROMPs) should remain out of scope of BNG. We believe that these can be addressed through existing policy and discussions with minerals planning

authorities, and that applying the new mandatory approach to old permissions with existing restoration plans would be disproportionately complex. We will instead use policy to support an approach based on appropriate ecological outcomes rather than percentage targets.

We intend to address concerns from the minerals industry about how BNG fits with their sector's long development timelines, and those raised about the process's ability to recognise the value of habitats created incidentally through mineral operations, through guidance and policy informed by further engagement with relevant sectors.

In the case of variations of planning permissions, respondents suggested that any Section 73 application that would result in a change to the post-development biodiversity value should require an updated biodiversity gain plan. Most of the respondents agreed that original pre-development baseline should apply, and Section 73 variation applications should be bound by the net gain condition. Some noted that this would not work where the original permission was granted before mandatory BNG was commenced. Subject to further engagement, we therefore intend to only apply the requirement to Section 73 applications where the original permission was granted after commencement of the mandatory BNG requirement. We have noted that guidance will be needed about what constitutes a change requiring an updated biodiversity gain plan. This was raised most clearly for minerals sites, for which Section 73 applications are often used to extend phases and could result in biodiversity unit costs when restoration plans are accordingly delayed.

4.2 Small sites and reducing the burdens of the process

As proposed, we are going to provide a small sites metric for developments which meet its size and absence of priority habitats criteria. We also accept that clear guidance, as well as innovative approaches to automation and digital support, will be critical to ensure that SME developers can engage with BNG positively to deliver greener developments.

While respondents were generally supportive of the November 2023 commencement date, they raised concerns about how prepared local planning authorities are. To lessen initial burdens and allow a longer period for developers and local planning authorities to adapt and prepare for the high volume for minor applications, we will extend the transition period for small sites until April 2024.

Small sites are defined for the purpose of the BNG exemption as:

(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.

We recognise the concerns raised by some respondents on the negative impact of compulsory acquisition on landowners, and their preference for compulsory acquisition to be used as a last resort for BNG delivery. We are not intending to make any new provisions for compulsory acquisition. We will, however, consider providing guidance or reference in biodiversity gain statements that outlines the reasonable alternatives developers should explore to deliver net gain before they consider compulsory acquisition of land.

Marine infrastructure

Responses to this section raised a number of helpful suggestions and observations that we will take into account for both NSIPs and TCPA development. We will also:

- provide clarity on the relationship between terrestrial/intertidal and marine net gain units as the marine net gain process is established
- ensure that the BNG approach enables intertidal and marine projects to contribute to ecologically meaningful strategic projects at larger scales, off site in the intertidal zone
- aim to provide alignment between the marine licensing and planning system regimes to minimise any conflicting demands or duplication in processes
- put in place the statutory credits system so that intertidal and coastal projects can meet their net gain obligations through payments into national projects, in the event that there is a shortage of market or developer-led intertidal or coastal biodiversity units

5. Government response part 3: How the mandatory BNG requirement will work for Town and Country Planning Act 1990 development

5.1 Biodiversity gain plan

We asked respondents whether they agree with the proposed content of the biodiversity gain information and biodiversity gain plan. The proposals were broadly supported, but it was suggested that:

- more information should be required about future management of biodiversity in the biodiversity gain plan
- the biodiversity gain information and biodiversity gain plan should make greater reference to existing industry guidance
- we should use regulations and guidance to clarify the precise information requirements, or provide a checklist of any necessary supporting documents
- intertidal developments should not be required to demonstrate delivery of on-site habitats, which are not usually ecologically feasible

- more of the template is labelled as mandatory to reduce the likelihood of plans needing to be resubmitted with additional information

We will aim to address the points above in the final biodiversity gain plan template. We will be requiring that biodiversity gain information (in the form of a BNG Statement) is provided alongside the planning application before a biodiversity gain plan is then submitted and approved prior to commencement of development. We will also continue to remove duplication across BNG documents and aim to reduce the overall length of the template.

Some respondents raised concerns relating to the proposal that “on-site biodiversity gains should be secured for delivery within 12 months of the development being commenced or, where not possible, before occupation” and questioned whether this was reasonable and achievable for sites such as minerals sites, phased developments, or sites with complex engineering demands. We will take these observations into account as we draft final guidance wording. We intend for this part of the guidance to influence planning authorities’ application of conditions, planning obligations and conservation covenants rather than to be enforced as an inflexible rule itself.

5.2 Off-site biodiversity gains

Guidance on appropriate use of off-site biodiversity gains

We will implement our proposals and provide further guidance on what constitutes appropriate off-site biodiversity gains for a particular development.

We recognise the need to deliver strategic biodiversity improvements to support the restoration of functional ecosystems but also recognise the value of access to nature near developments for communities. Government will continue to incentivise a preference for on-site gains over off-site gains. There is one exception to this, intertidal developments, for which small on-site enhancements are often inappropriate. We will also incentivise local off-site provision in strategically significant locations through the biodiversity metric. We will keep this position, and the extent that BNG is contributing to off-site nature restoration, under review through our monitoring and evaluation of BNG in practice.

Securing sites for more than 30 years

Government intends to commence mandatory BNG with 30 years set as the minimum period for which biodiversity gain sites must be secured. As proposed in the consultation, this will not be reviewed before 2026 so that there is a reasonable amount of information available on the biodiversity gain market and potential impacts of a longer minimum duration.

Several respondents wanted to know what would happen after the 30-year period has passed. At the end of a 30-year biodiversity gain agreement, a landowner would likely be able to consider other available incentives to maintain or further enhance the site. We would hope that very few biodiversity gain sites are taken out

against this. A fee may be charged for appeals, in keeping with the principle of cost recovery. Government does not intend to provide for an appeal process for third parties, but we will consider options for allowing third parties to contact Natural England to raise concerns about the registration process itself. Information on registered gain sites will be in the public domain and the register will detail the relevant enforcement body for each gain site.

5.6 Additionality

We asked about 5 separate proposals (on page 72 of the consultation) about additionality which were broadly supported by respondents. We intend to implement these five proposals.

The proposals included a statement that mitigation and compensation for protected species and protected sites can be counted within a development's BNG calculation. The consultation document stated that: "at least 10% of the gain should be delivered through separate activities which are not required to mitigate or compensate for protected species impacts". This has been interpreted in different ways. To clarify, this means that at least 10% of the total (110+%) post-development biodiversity score should be from measures which are not undertaken to address impacts on protected species or protected sites (e.g. nutrient mitigation). For example, if a development has a baseline score of 10 biodiversity units and needs to achieve a score of 11 units, at least 1 unit should come from separate activities (such as an onsite habitat or the wider market for biodiversity units).

Enhancements in statutory protected sites for nature conservation

We will not be making an exemption for development on statutory sites designated for nature conservation. We asked whether the non-designated features or areas of statutory protected sites, Local Wildlife Sites and Local Nature Reserves should be eligible for enhancement through BNG. Responses were generally supportive, but in recognition of the risk of 'cost shifting' raised by some academic respondents, we will be providing guidance on the circumstances in which statutory protected sites can be enhanced for BNG and will keep this position under review through policy evaluation.

In response to broad support for the proposal, we will state that all habitats in the intertidal zone, including designated features of protected sites, or a short distance (to be confirmed, but no more than 2 kilometres) above the high-water mark, would be eligible for enhancement for BNG. Any compensation that a development is delivering in meeting wider statutory protections may be counted towards that development's BNG. This would be subject to any relevant approvals for the enhancement and only permitted where the proposals do not risk harming designated species or features.

Stacking of payments for environmental services

We asked whether payments for biodiversity units should be combined with other payments for environment services from the same parcel of land ('stacking'). We will publish guidance alongside this response on how BNG and nutrient mitigation can be stacked and how they can be combined with other schemes. This first phase of guidance will run until March 2025.

Land managers will be able to sell both biodiversity units and nutrient credits from the same nature-based intervention, for example the creation or enhancement of a wetland or a woodland on the same parcel of land. Land managers should not sell credits for other ecosystem services (such as carbon credits) from the same nature-based intervention if they are also selling biodiversity units and/or nutrient credits.

Biodiversity units may be generated on top of an existing obligation or grant payment if the land manager is able to further enhance a habitat and can establish a clear and verifiable baseline from what the existing payment or obligation has achieved. See also the 'Staged sales' section earlier in Part 3.

5.7 Statutory biodiversity credits

Natural England will sell statutory biodiversity credits on behalf of the Secretary of State. Credit sales will be facilitated by an accessible and user-friendly digital sales platform which is currently being developed and tested.

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

We aim to minimise the use of statutory biodiversity credits and phase them out once the biodiversity unit market has matured.

Credit price

An indicative credit price will be published 6 months in advance of BNG becoming mandatory. The price will be set to be intentionally uncompetitive with the market. We are assessing whether to vary the price by habitat type. We will review the price at 6-monthly intervals in response to market data once the mandatory requirement is in place. Price changes will be indicated well in advance to allow developers to plan ahead. We will be providing policy guidance on when a developer will be able to access the credit scheme to ensure that they remain a last resort.

Credit investment

As proposed, revenue from credit sales will be invested by Natural England on behalf of Defra's Secretary of State in strategic habitat creation and enhancement projects which deliver long-term environmental benefits and an overall net gain in England.

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. For transparency, the Secretary of State will publish an annual report detailing the total payments received by the credit scheme and how those payments have been used. Credit investment will only be used for the purposes set out in the Environment Act 2021.

Statutory biodiversity credits can only be sold by the Secretary of State, and it will not be possible for local variations of these to be sold (for example, local tariff schemes) for the purpose of meeting the mandatory requirement.

5.8 Reporting, evaluation, and monitoring

We recognise the concern raised by some respondents that additional training and capacity will be needed for effective enforcement by all planning authorities. The register operator will not have planning enforcement powers and planning authorities will need to ensure that gains are appropriately secured where necessary to enable effective enforcement. Gains can be secured via planning conditions, planning obligations or conservation covenants (or a combination of these methods). We intend to make this clear through guidance and training. For gains that are secured with conservation covenants, we expect costs for monitoring and enforcement activities to be reflected in the price of biodiversity units. We will define the threshold for significant on-site gains, which will need to be explicitly secured through the mechanisms set out above, in guidance and are currently minded to set a definition according to habitat area and distinctiveness.

The planning enforcement regime will be the principal way of enforcing delivery of BNG. We will review the role of guidance in supporting when enforcement action can be taken, to clarify that a failure to deliver promised environmental enhancements can justify enforcement action at a planning authority's discretion. We will also work with the Department for Levelling Up, Communities and Housing on any future measures and guidance that could support enforcement of BNG.

We noted in the consultation that clear and proportionate monitoring proposals for enhanced habitats will be essential to facilitate wider policy evaluation and enforcement. We will make it clear that planning authorities should set specific and proportionate monitoring requirements as part of planning conditions and obligations used to secure off-site or significant on-site habitat enhancements. Some respondents suggested changes to the monitoring frequencies we suggested and we will take these suggestions into account as we finalise guidance.

Conservation covenants

Local planning authorities and other eligible organisations can apply to become responsible bodies and use conservation covenants which have been designed for the purpose of securing, and where necessary enforcing, positive (and restrictive) land management obligations. Conservation covenants bind the land which means they will apply to new landowners if the land is sold.

Prospective responsible bodies will be able to apply to Defra for designation from early 2023 and successful applicants will be able to create conservation covenants thereafter. We will publish guidance on what should be included in a conservation covenant or planning obligation which secures biodiversity gains for the purpose of BNG.

Earned recognition

We asked whether accreditation or earned recognition has potential to help focus enforcement and scrutiny of BNG assessments, reporting and monitoring. We will continue to explore the potential for earned recognition with stakeholders and monitor practice to establish whether a higher competency or accreditation bar is needed for components of the BNG approach.

In response to suggestions from respondents that the independence of ecologists is important, we will also continue to consider whether reforms are needed to the procurement or regulation of ecological expertise. We do not think that introducing structural changes to the ecology and planning authority sectors would be sensible in the immediate future while BNG and wider changes are being implemented.

Policy level evaluation

We asked whether proposals for policy-level reporting and evaluation seemed sufficient and achievable. We will consider the responses provided as we continue to develop our monitoring and evaluation framework for mandatory BNG.

Biodiversity reports

We asked whether there was any additional data that should be included in biodiversity reports required by the strengthened biodiversity duty on public authorities introduced by the Environment Act, and whether there was anything that should be removed. We will consider the suggestions provided for inclusion in reporting requirements, along with the scope to reduce duplication across reporting templates and products.

5.9 Local planning authorities (LPAs)

We announced £4.18 million for LPAs in January 2022. We will be providing further funding of up to £16.71 million for LPAs to prepare for mandatory BNG between now and November 2023. This will be followed by further new burdens funding following commencement of the requirement in November 2023. As set out in the original BNG impact assessment, our assessment remains that there is an additional burden created by the reforms, primarily in the form of demand for additional ecologist and monitoring resources.

We are continuing to provide support through the Planning Advisory Service to local planning authorities to implement biodiversity net gain.