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Submitted to Consultation on Biodiversity Net Gain Regulations and Implementation
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Confidentiality and your response

1 Would you like your response to be confidential?

No

If you answered 'Yes' to this question, please state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality:

2 What is your name?

Name:
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4 What is your organisation?

Organisation:
Bat Conservation Trust

5 Which option best describes the sector you work in or otherwise represent?

Non-governmental organisation

If you answered 'Other', please specify:

Introduction

Background

Why are we consulting?

The context for biodiversity net gain

Overview of the proposed biodiversity net gain processes

Part 1: Defining the scope of the BNG requirement for Town and Country Planning Act 1990

Part 1.1: Exemptions

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

6 Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

No (please explain why not)

Please provide any explanation for your answer here:

No, BCT does not agree with the proposal to exempt development which falls below a de minimus threshold from the biodiversity net gain requirement, especially for medium distinctiveness habitats. The size of a habitat is not always related to its value or the potential impacts of its loss, including for connectivity and cumulative effects. This is particularly true in the urban environment. Also there are issues with accuracy of measuring 2 metres squared on mapping systems. The outcome would be more time and money spent on this mapping issue than on providing BNG.

While the standard approach to BNG may not work for small sites, a dedicated toolkit of pragmatic options applicable to small sites could be developed as an alternative.

No (please explain why not)

Please provide any explanation for your answer here:

No, BCT does not agree with the proposal to exempt development which falls below a de minimus threshold from the biodiversity net gain requirement, especially for linear habitats. For instance, the loss of even a small length of hedgerow can have detrimental impacts on many species including horseshoe bats and dormice, who rely on connectivity to navigate the landscape. Such losses reduce connectivity and lead to fragmentation at a time of crisis for species when we should all be working at a landscape scale to ensure permeability of the landscape, especially with the climate change challenge we are facing.

1.1.2: Householder applications

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

Other (please tell us more)

Please provide any explanation for your answer here:

BCT agrees that some householder applications should be exempted from the biodiversity net gain requirement, specifically small householder extensions/garage conversions. This should not remove any existing obligations to consider the presence of European Protected Species, including through Permitted Development, and to provide the mitigation hierarchy for those species present.

However, the scale of the application is important and if the application is large and involves loss of semi-natural habitat then it could be subject to following a toolkit that makes BNG for householders and small developments pragmatic but deliverable.

1.1.3: Change of use applications

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

No (please explain why not)

Please provide any explanation for your answer here:

Change of use applications can have impacts on existing habitats, for example, change from stock farming to livery stables resulting in relatively low intensity grazing by cattle being replaced by more intensive grazing by horses and ponies.

We would also like to flag that permitted development, as it has the potential to cause negative and lasting environmental impacts, should not be exempt from mandatory BNG. This is especially in relation to the agriculture to residential conversion and in the conversion of office space to residential. At a minimum, species legislation, Green Infrastructure and BNG should be made matters for local consideration through prior approval of permitted development rights.

1.1.4: Creation of biodiversity gain sites

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

No (please explain why not)

Please provide any explanation for your answer here:

No, BCT does not agree with the proposal to make an exemption for projects which enhance biodiversity for the purpose of discharging the mandatory net gain condition by applying a no net loss requirement to them. Applying mandatory BNG to these projects will reduce the risk of inappropriate net gain design by ensuring they apply the mitigation hierarchy when delivering net gain: first avoidance of impacts, then mitigation, then compensation, then gains. It also will remove the risk of projects claiming they were undertaken exclusively for BNG in order to be exempt from mandatory BNG.

1.1.5: Self-builds and custom housebuilding

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

No (please explain why not)

Please provide any explanation for your answer here:

No, self-builds and custom housebuilding developments should not be exempt from the mandatory net gain requirements. Net gain can be delivered on self-builds and custom housebuilding developments. The small site metric or toolkit could help simplify the BNG process for self-builds and custom housebuilding sites.

It is not always the case that self-builds are both sustainable and small-scale, with self-build sites being developed containing several properties at a time. There is an increased tendency for self builds to be in more rural areas, and in more challenging sites, where the likelihood of biodiversity impacts is greater. Small developments may have large indirect impacts upon adjacent sites or for ecological connectivity.

The cumulative impacts of multiple developments, even at small scales, can result in cumulative loss of habitats and biodiversity, especially in areas of high biodiversity value.

There should not be a blanket exemption which creates a loophole for developers or self builders who are building multiple sites.

1.1.6: Brownfield sites

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

Yes

Please provide any explanation for your answer here:

Yes, we welcome the Government's proposal not to exempt brownfield sites from mandatory BNG. We agree that brownfield sites can be of high biodiversity value particularly to protected species, in which case BNG should be applied. In cases where a brownfield site is of low environmental value, this offers significant potential for achieving BNG as long as the proposals are mindful of limitation any brownfield site might bring, such as artificial lighting at night and other forms of disturbance.

1.1.7: Temporary permissions

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

Yes

Please provide any explanation for your answer here:

Yes, we agree that temporary applications should not be exempted from the BNG requirement. Longer temporary permissions might cause significant and long-term negative impacts on biodiversity.

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

13 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

Please provide any explanation for your answer here:

Yes, we agree with the proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas. These locations are important for nature and the standards for protection of biodiversity in these areas should be maintained. BNG should never remove any existing obligations to consider the presence of European Protected Species, including through Permitted Development, and to provide the mitigation hierarchy for those species present. Currently a significant proportion of local authorities are unclear on the need to consider Protected Species under Permitted Development and this situation must be addressed. The current proposals around BNG give an opportunity to do so.

1.1.9: General question on exemptions

14 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?

No

Please provide any explanation for your answer here:

No, there are no further development types which BCT believes should be exempt from the biodiversity net gain requirement or subject to a modified requirement.

We would also like to flag permitted development, as it has the potential to cause negative and lasting environmental impacts, should not be exempt from mandatory BNG. At a minimum, species legislation, Green Infrastructure and BNG should be made matters for local consideration through prior approval of permitted development right. This is particularly important to reiterate with regard Protected Species where there is already confusion amongst Local Authorities on this matter and where vital protection is often undermined.

Part 1.2: Development within statutory designated sites for nature

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

Yes

Please provide any explanation for your answer here:

Yes, we agree that development within statutory designated sites for nature conservation should not be exempted from the biodiversity net gain requirement but we strongly assert that there should be no development on statutory nature conservation sites. Development that impacts the features of a protected site should not be considered to have achieved biodiversity net gain (in the same way as irreplaceable habitats). The mitigation hierarchy

must be properly applied to steer development away from protected sites (statutory and non-statutory). Government's proposals and communications should be stronger in emphasizing the mitigation hierarchy to ensure it is properly applied. For example, the chart on page 7 (also the Annex B form on page 99), does not address avoidance as the first principle to be exhausted, and the site selection and mitigation hierarchy section of the chart on page 14 should be made clearer. The pre-application submission of biodiversity information should include checks on how the mitigation hierarchy has been adhered to, by requiring sections F, G and H of the BNG template form to be submitted.

However, we know that unfortunately and inappropriately development does occur in statutory nature conservation sites and in these cases, mandatory BNG should apply. BNG should not excuse otherwise unacceptable developments or impacts on statutory sites. Any planning application or BNG assessment coming forward which shows a protected site will be impacted should serve as a red flag.

We agree with the Government's statement that the biodiversity net gain requirement is 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. We strongly agree that demonstrating and delivering genuine additionality of BNG measures in protected sites is essential.

Part 1.3: Irreplaceable habitat

16 Do you agree with the stated proposals for development (or component parts of a development on irreplaceable habitats), specifically:

Yes

Please provide any explanation for your answer here:

Yes, we agree with the exclusion of development impacting irreplaceable habitats from mandatory biodiversity net gain because the BNG cannot be achieved and therefore is not applicable when irreplaceable habitats are lost or damaged.

However, being irreplaceable, the controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust and that is the most vital point. All other measures are not addressing that fundamental loss of something that is irreplaceable. BNG should not form any part when considering allowing developments or impacts on irreplaceable habitats. These 'wholly exceptional reasons' are quite separate. Nor can BNG have any role in any compensation strategy. The NPPF must be updated to include clear policy on this.

The NPPF can also learn from some of the standards set by a BNG approach. The Environment Act enables use of an earlier baseline for habitat assessment. This should also apply to the application to deliberate degradation, including tree felling to enable development, of irreplaceable habitats. There are cases where pre-emptive damaging of development sites were discovered using past satellite imagery. We recommend that local authorities or central Government should use past Google Earth imagery to confirm that the site has not been damaged or cleared. BCT welcomes the back dating of initial habitat assessments for BNG to January 2020 to mitigate for deliberate degradation of habitats.

As a key irreplaceable habitat, Defra's commitment to consult on and improve the NPPF policy protection for ancient woodlands must not be delayed.

Another important aspect of ensuring our irreplaceable habitats are protected is surveying for and identifying these habitats with a trained ecologist. For example, the Ancient Tree Inventory should be updated. Having the environmental information available upfront or as early as possible in the planning process will save the local authority and developer time and resources.

Yes

Please provide any explanation for your answer here:

Yes, there should be a separate irreplaceable habitats document and plan that is supported by the irreplaceable habitats guidance currently under development. While a plan is important to increase transparency about the impacts on irreplaceable habitats, it should be clearly defined as a separate document from the biodiversity net gain plan.

This separate document for irreplaceable habitats should outline how impacts on irreplaceable habitats are avoided and reduced and how bespoke compensation will be secured for the long-term. It should detail the impact on the species supported by the affected irreplaceable habitat and include how those impacts are being avoided both spatially and temporally. For example, an area of ancient woodland lost or impacted would support species that are reliant on this for their survival, including legally protected species. What needs to be considered is the availability of that irreplaceable habitat within the affected species functional range and/or the time between compensation provision being made and it acquiring the features that support the obligate species associated with it. If these two points are not satisfactorily discharged then the plans should be rejected. It should also include information about the baseline biodiversity unit value of the compensation site to ensure there is an actual uplift in units on the compensation site, to help prevent the loss of other valuable habitats, for example by inappropriate tree-planting on valuable grassland habitats when compensating for the loss of ancient woodland. It could also be informed by NE/FC's checklist of questions to aid local authorities for Ancient Woodland.

Yes

Please provide any explanation for your answer here:

Yes, we agree that where there are no negative impacts to irreplaceable habitat, the biodiversity metric could be used to calculate the value of enhancements of irreplaceable habitat.

The metric should always be underpinned by trained ecological expertise and on-the-ground ecological surveys.

Any enhancements to irreplaceable habitat delivered as part of mandatory BNG must be truly additional to any statutory obligations or existing commitments. For example, where there is overlap between SSSI and IH designation, BNG should not be allowed to fund enhancements on designated features. BNG and private investment should not be used to plug gaps in public funding for statutory obligations.

Yes

Please provide any explanation for your answer here:

Yes, we agree in principle with the proposal to set out a definition and list of irreplaceable habitats, which would be supported by guidance on interpretation. However, this depends on the agreed definition and how it will be applied to identify which habitats are irreplaceable. It would be wise to include the input of NGOs when developing this crucial guidance.

The controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust and we therefore suggest the NPPF should be updated with the list of irreplaceable habitats, in addition to the planned guidance, to ensure weight is given to key aspects in decision-making and to expand and strengthen the protection for irreplaceable habitats from negative impacts from development.

To support the implementation of regulations and guidance on irreplaceable habitat, irreplaceable habitats will have to be surveyed, identified and recognised. The Ancient Woodland Inventory is being updated and so should other important inventories, such as the Ancient Trees Inventory. Recognition should be given to the Ancient Tree Inventory and ancient hedgerows. However, for other habitats, the datasets are not complete. Thus local data, mapping and knowledge will be required to supplement existing data and update the inventories. Having the environmental information available upfront or as early as possible in the planning process will save the local authority and developer time and resources. This should be part of the Local Nature Recovery Strategy process.

Yes

Please provide any explanation for your answer here:

Yes, we agree in principle with the proposal to provide guidance on what constitutes irreplaceable habitat to support the formation of bespoke agreements. However, the guidance should advise that the precautionary principle is applied if there is not enough evidence to determine the replaceability of a habitat. As the starting point is the definition of irreplaceable habitats, then any loss where a compensation agreement is applied should be a rare exception.

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

Part 2.1: Phased development and development subject to subsequent applications

17 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

Please provide any explanation for your answer here:

Yes, BCT agrees with this approach to phased development and development subject to subsequent applications to outline how the overall development will achieve net gain at the outset and prior to each phase beginning work. However, consideration should be given to front loading BNG delivery, or at the very least ensuring that BNG equivalent to 10% more than the habitats lost in each phase is delivered at the start of that phase of works.

Considering the BNG requirement as part of the Master planning for the whole development will help ensure the process is streamlined and transparent and help each developer (where multiple developers are involved) understand their contribution. We also appreciate that some flexibility is required to accommodate changes over time, and in phased developments, additional BNG information will be needed to be submitted, including a strategy for how it will be delivered and tracked on a phase-by-phase basis.

In the BNG proposals, there must be clear consideration of the potential impacts on statutory sites and irreplaceable habitats, ensuring the development and its biodiversity net gain proposals do not adversely affect designated features and irreplaceable habitats or interfere with the achievement of the conservation objectives of protected sites or protected species.

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

No (please suggest alternative approaches)

Please provide any explanation for your answer here:

The Review of Mineral Permissions should require mandatory biodiversity net gain, or at least bring forward new conditions to require no net loss. This is an opportunity to bring existing Mineral Permissions up to current standards and to promote best practice across the sector.

Part 2.2: Small sites

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

Other (please tell us more)

Please provide any explanation for your answer here:

The metric or toolkit must be fit-for-purpose and used and implemented by trained ecologists. Guidance on its use and application will be important. We welcome the Government's commitments to consulting again on the Small Sites Metric before being in use for mandatory BNG.

20 Do you think a slightly extended transition period for small sites beyond the general 2-year period would be appropriate and helpful?

No (please explain why not)

Please provide any explanation for your answer here:

It would not be appropriate or helpful for biodiversity or our wider environment to delay implementation of BNG. Biodiversity net gain must be implemented as soon as possible. The transition period for small sites should not be extended. The small sites metric should mean that this is a simpler system and therefore could be implemented at the same time as the wider BNG requirement. There is no merit to the argument that the implementation of BNG for small developments should be delayed in order to learn from larger developments. Larger developers are implementing this approach now so no delay is required for this reason.

There is also potential for confusion around what is required and when if implemented at different times and a risk that developers could split their sites into smaller sections to avoid requirements.

Implementing small sites metric at the same time will also reduce the burden on LPA's. The majority of the applications they deal with are from small sites and so a smooth transition for this category will be important.

21 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)

Please provide any explanation for your answer here:

Yes, clear guidance and training for LPAs, developers and consultants on the use and the application of the small sites metric or toolkit will be useful.

Part 2.3: Nationally significant infrastructure projects

2.3.1: Proposal 1 - Scope, percentage, and targeted exemptions

22 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?

No

Please provide any explanation for your answer here:

No, BCT does not think any targeted exemptions (other than those proposed for irreplaceable habitats), reduced biodiversity net gain objectives, or other modified requirements are necessary for the application of the biodiversity net gain requirement to NSIPs.

The minimum requirement of 10% gains must be the absolute minimum and applied to all NSIPs to ensure that gains are not within the margin of error for the valuation of habitats.

Given the simplifying nature of the metric and the continuing decline in biodiversity, developments should be encouraged to go above the 10% minimum requirement wherever possible. Given that NSIPs are the most ecologically damaging and economically-rich projects, a minimum requirement above 10% is more likely to secure better ecological outcomes. We know there is willingness from developers to go beyond 10%.

To ensure NSIPs genuinely deliver BNG, we would like to highlight a few other points for the application of BNG to NSIPs:

a. The mitigation hierarchy must be properly applied in the application of BNG to NSIPs. Avoidance is first and projects must demonstrate how they have first exhausted avoidance, in line with Government guidance or advice, before moving on to minimisation.

b. The delivery of net gain through NSIPs must take into account the impact of the loss of habitats on protected species, particularly those that rely on those habitats as part of a functional landscape. Loss of linear features are particularly detrimental to bat species who rely on them for refuge and as navigational features. Any off-site gains must be as close to the original habitat location as possible and within the species core sustenance zone to ensure that the landscape is still ecologically functional for the local protected species population.

2.3.2: Proposal 2 - Setting the requirement and transition arrangements through 'biodiversity gain statements'

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

Yes (please explain why)

Please provide any explanation for your answer here:

We welcome the Government's commitment to update National Policy Statements with the biodiversity net gain statements, with the net gain requirement, date from which the objective is expected to apply, and the stage of project design to which the commencement threshold applies. We also

welcome the intention to consult on the Biodiversity Gain Statement(s).

24 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?

No, it should be sooner (please provide any supporting evidence or justification)

Please provide any explanation for your answer here:

The application of BNG to NSIPs should commence as soon as possible, if the policy is to make a genuine contribution to the objective of recovering nature and reversing the decline of species abundance by 2030. NSIPs are some of the most environmentally damaging and long-term projects. Failure for mandatory BNG to be applied earlier risks discouraging projects that are already working towards delivering a BNG ahead of the deadline and risks many developments being approved for examination ahead of 2025 without mandatory BNG which can take many years of planning, design and construction before completion, which is out of step with the Government's environmental targets and ambitions.

All NSIPs should currently be achieving no net loss (NNL) as a very minimum due to existing policies and international obligations and there are big infrastructure programmes which have already achieved net gain. The Environment Act (2021) sets out some clear minimum requirements on which NSIP developers should, with reasonable confidence, be able to plan for BNG ahead of the formal publication of the policy statement(s).

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

No (please explain why not)

Please provide any explanation for your answer here:

In order to reduce the timeline of the transition, the threshold upon which to set transition arrangements could be at examination stage rather than at acceptance stage. Again, many NSIPs are already delivering no net loss and many are already preparing to deliver biodiversity net gain.

2.3.3: Proposal 3 - NSIP off-site gains and a 'portfolio approach'

26 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?

No (please explain why not)

Please provide any explanation for your answer here:

No, BCT is not supportive of an approach which facilitates delivery of BNG using existing landholdings by requiring a lighter-touch registration process. There is no reason why BNG enhancements delivered on their own estate should not be captured through the same register.

Any biodiversity net gains delivered on existing landholdings must be additional. Many organisations will already have a duty to further the conservation and enhancement of biodiversity, as well as having to have regard to the relevant Local Nature Recovery Strategies, Species Conservation Strategies and Protected Site Strategies.

2.3.4: Proposal 4 - Process and demonstrating biodiversity net gains

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

Yes

Please provide any explanation for your answer here:

Yes, BCT considers that the broad biodiversity gain plan approach would work in relation to NSIPs.

28 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)?

No (please explain why not)

Please provide any explanation for your answer here:

No, there should be no distinction made for NSIPs between on-site habitats subject to the biodiversity net gain percentage and those habitats within the development boundary which are dedicated mitigation areas, because while mitigation areas cannot contribute to net gain, impacts to these areas must be captured in the site's baseline metric in order to ensure that any uplift is truly additional.

29 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)

Please provide any explanation for your answer here:

Yes, there is further information that should be supplied for NSIPs biodiversity gain plans than is currently required in the draft gain plan in the annex. Currently, the template form does not require information about following the mitigation hierarchy, the presence of irreplaceable habitats and statutory sites, protected species and the location of, and distance to, offsite habitat enhancement, with the biodiversity net gain information at the pre-application stage. BCT believes this information should be a requirement at the pre-application stage in order to reinforce the mitigation hierarchy in the application of BNG to NSIPs. It is vital that more clarity is needed about the steps that have been taken to first prove avoidance, before moving to minimisation.

2.3.5: Proposal 5 - Maintenance period for Nationally Significant Infrastructure Project developments

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

No, it should be longer

2.3.6: Proposal 6 - Compulsory acquisition

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

Yes, both (please explain what is needed)

Please provide any explanation for your answer here:

While further powers might need considering, the use of powers should not be the default. There are many steps that should first be taken to avoid compulsory purchase for BNG and a strong steer should be provided in any future Biodiversity Gain Statement on these steps. It is acknowledged that there will be instances where acquiring land adjacent to the site will be the best outcome.

2.3.7: Proposal 7 - Marine infrastructure

32 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?

Not Answered

Please provide any explanation for your answer here:

No comment

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

Part 3.1: Biodiversity gain plan

33 Do you agree with the proposed:

No (please explain why not)

Please provide any explanation for your answer here:

BCT does not disagree with any content currently proposed for the biodiversity gain information and biodiversity gain plan, but we believe there is some content missing from the information and plan that will be crucial to effective delivery of BNG.

More specific information should be requested and supplied in both the biodiversity gain information and biodiversity gain plan to ensure the applicant applies and demonstrates following the mitigation hierarchy in a rigorous and transparent way. Specifically, the biodiversity gain information and plan should include 'steps taken to avoid, mitigation and compensate' (as well as 'minimise', as is currently in the proposals) to demonstrate how first avoidance has been pursued and exhausted, before moving on to the next step of the mitigation hierarchy. We think it is vital that the Government's proposals and communications should be stronger in emphasizing the mitigation hierarchy to ensure it is properly applied, for example, the chart on page 7 (also the Annex B form on page 99), does not address avoidance as the first principle to be exhausted, and the site selection and mitigation hierarchy section of the chart on page 14 should be made clearer.

The pre-application submission of biodiversity information should include checks on how the mitigation hierarchy has been adhered to, for example by requiring sections F, G and H of the BNG template form to be submitted at this stage.

We also believe there is a need to specify that a robust evidence base needs to be consulted to inform the design of the biodiversity net gain and the biodiversity gain information and plan should reflect that. The process should be prescriptive about which data sources are used to inform the process, setting a minimum requirement of checking MAGIC, NBN Atlas and LERC data.

The plan is also currently missing the requirement to provide information on the presence of irreplaceable habitats and statutory sites, protected species and the location of, and distance to, offsite habitat enhancement, with the biodiversity net gain information at the pre-application stage.

Finally, we suggest more guidance and clarity around how the biodiversity net gain information and plan should be prepared, with further content or guidelines in the template and case studies to help illustrate, for example, as to how the information and plan should demonstrate the mitigation hierarchy and consult a robust evidence base.

No (please explain why not)

Please provide any explanation for your answer here:

It is essential that the biodiversity net gain information at the pre-application stage includes information on the mitigation hierarchy, for example by requiring sections F, G and H of the BNG template form to be submitted, and wider biodiversity obligations, e.g. statutory sites and irreplaceable habitats, as that information and considerations will inform the biodiversity net gain approach to be submitted at the pre-application stage. The requirements around this information to demonstrate the mitigation hierarchy must be strengthened to include 'steps taken to avoid, mitigation and compensate' (as well as 'minimise', as is currently in the proposals) to demonstrate how first avoidance has been pursued and exhausted, before moving on to the next step of the mitigation hierarchy (also see our response to 33a).

The full biodiversity net gain plan should be required prior to planning permission being granted, rather than at the pre-commencement stage proposed in the process diagram (Fig 2, page 14 of the consultation document), in order to ensure it is fully considered in the decision-making process.

Also, the consultation document does not address the approach for the submission and approval of the biodiversity net gain information and plan when the local planning authority is also the developer. The regulations and guidance should be clear about the approach in these circumstances.

34 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?

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?)

Please provide any explanation for your answer here:

The form should be changed to require the sections F, G and H on the BNG template form on the mitigation hierarchy and wider biodiversity obligations, e.g. statutory sites, protected species and irreplaceable habitats, to be submitted with the biodiversity net gain information at the pre-application stage.

Along with further information in the template form to specify that a robust evidence base needs to be consulted and which data sources are used to inform the process, setting a minimum requirement of checking MAGIC, NBN Atlas and LERC data (see our response to 33a), the form should include links to these databases.

The template form should also provide links to an Ecological Impact Assessment report or Environmental Statement, and An Appropriate Assessment (if required).

We also suggest more guidance and clarity around how the biodiversity net gain information and plan should be prepared, with further content or guidelines in the template and case studies to help illustrate, for example, as to how the information and plan should demonstrate the mitigation hierarchy and consult a robust evidence base.

Part 3.2: Off-site biodiversity gains

35 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)

Please provide any explanation for your answer here:

Whilst we strongly support the approach of first following the mitigation hierarchy, then onsite, followed by adjacent to site before offsite is considered, we do feel further guidance is critical to ensure good decision-making and accurate records on off-site biodiversity gains. Also to ensure that it is applied only where the outcomes of off-site provision are not at a distance that would be detrimental to species impacted on-site. It should also take into consideration impacts on quality of living for new and existing site-based communities.

The guidance should make it clear that a competent and qualified ecologist must be involved in the process of choosing and registering offsite habitat gains. There should be more of an emphasis on BNG-related training covering BNG design, use of the metric and habitat condition assessment for ecological consultants.

Providers of net gain may not have any knowledge or expertise in habitat creation and management, and must be supported by an expert. Monitoring and reporting on outcomes must also be done by a competent person, supported by training on developing management and monitoring plans once Natural England guidance and templates are available.

It is essential that planners and other disciplines get the training required to be competent in BNG. The local planning authority must be able to see the monitoring and reporting of gain sites and provide guidance where needed. Sufficient in-house ecological specialism is required to enable the LPA to be able to assess BNG proposals, or the ability to buy in this function from neighbouring LPAs.

The Government should provide further guidance and training for ecological consultants and local planning authorities on what the decision process required should be when considering between onsite and offsite provision as they will be evaluating the biodiversity net gain plan.

As the consultation document states, delivery of offsite gains should be strategic and ecologically coherent and joined up with Local Nature Recovery

Strategies. It should be local to the site where possible, to maintain ecologically functional landscapes. More guidance and detail on how this will work is needed (it should not be limited by administrative LPA or RA boundaries). It should also ensure that the impact of the location of offsite provision takes fully into account the impacts on protected and priority species. If there are going to be losses to the habitats and structures that support these species, is the offsite provision going to be within the functional range of the affected species? If not, this could lead to deterioration of local populations or even their local extinction, including of protected species.

36 How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?:

We welcome and strongly support longer time periods than the current 30-year minimum being required. Other sites, such as Suitable Alternative Natural Greenspaces (SANGs), have a requirement to be managed in perpetuity.

We recommend the Government increase the minimum for new developments and registrations after evaluating mandatory biodiversity net gain practice, as enabled by the Environment Act.

To encourage developers and landowners to secure sites for a longer period (or in perpetuity) where possible, policy and guidance will be important, including on conservation covenants. We also recommend a planning designation to protect land for nature's recovery should be considered to help give Local Nature Recovery Strategies weight in the planning system and to help protect land to put it on a journey to good ecological condition. Engagement with landowners, including through Local Nature Recovery Strategies conservation covenants will be important. When possible, handing BNG sites over to conservation bodies and Local Authorities to manage in the long-term should occur, helping protect and manage them in perpetuity to contribute to nature's recovery across the country.

Part 3.3: The market for biodiversity units

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

Yes

Please provide any explanation for your answer here:

Yes, in principle we agree with the consultation document's proposals for who can supply biodiversity units and the circumstances in which they may do so. However, many landowners will not have experience of habitat creation and management, so evidence should be required that the right expertise and advice is in place to create and restore habitats, to secure long-term management and to properly conduct monitoring and reporting.

38 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?

No (please explain why not)

Please provide any explanation for your answer here:

No, we strongly disagree with the Government's proposal that developers which exceed the biodiversity gain objective should be allowed to use or sell the excess biodiversity units as off-site gains for another development. By incentivising the selling-off of any 'excess' biodiversity gain, this proposal would result in a ceiling of 10% net gain. Rather, 10% gain should be the minimum, not the maximum, to be achieved.

In addition, this proposal risks incentivising developers to overestimate the number of onsite units, so that they can sell off the 'excess' gains. We are concerned about this proposal especially in light of the lack of strong governance, monitoring and enforcement for the delivery of onsite net gain in particular.

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

No (please explain why not)

Please provide any explanation for your answer here:

No, we do not agree with the Government's proposals not to establish a centralised trading platform or record the prices for biodiversity units. A centralised trading platform is essential to ensuring that net gains are delivered and the prices are recorded in a transparent public database. This will help ensure that net gains are delivered and that third parties can hold the system to account.

Part 3.4: Habitat banking

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

No (please specify what else could be done and why it is needed)

Please provide any explanation for your answer here:

No, we believe that further measures are needed to make habitat banking work.

Guidance is needed on a good baseline assessment and environment impact assessment, criteria to ensure long-term management, and recording and

provision of suitable monitoring information to demonstrate delivery, to ensure that habitat is created and managed to a high standard by accredited managers.

There is a risk to the integrity of habitat parcels if the surrounding habitats/land is managed in a way that isolates it or causes negative impacts. The location of habitat banks and all offsite gains should also be guided by Local Nature Recovery Strategies and contribute to the Nature Recovery Network. There should also be mechanisms and sufficient resources for enforcement and penalties applied if the promised gains are not delivered.

41 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

Please provide any explanation for your answer here:

Yes, we agree with the proposal and the specific date. A specific date will ensure that existing habitat is not wrongly counted as contributing to net gain, undermining the policy.

In addition, for the biodiversity gains to be additional and eligible as units, there should be clear evidence of the pre-existing distinctiveness or condition to prove the gain and evidence that the habitat creation or restoration was undertaken solely for the purpose of biodiversity net gain and was not funded by other mechanisms.

42 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?

Not Answered

Please provide any explanation for your answer here:

No comment

Part 3.5: The biodiversity gain site register

3.5.1: Proposal 1 - The criteria and process for registration

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

Yes

Please provide any explanation for your answer here:

Yes, we agree with these criteria. We strongly welcome the intention for onsite gains to be added to the register.

44 Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

Not Answered

Please provide any explanation for your answer here:

No comment

3.5.2: Proposal 2 - Information that will be required by and recorded in the register

45 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?

No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this)

Please provide any explanation for your answer here:

In addition to the information requirements listed in the consultation document, we believe stronger evidence about the baseline condition of the habitat is necessary. In order to stop landowners reducing the quality of their land, reducing the baseline so that they can generate the maximum biodiversity uplift, this requires third party oversight. Researchers have come across cases where pre-emptive damaging of the site were discovered using past satellite imagery. We recommend that local authorities or central Government should use past Google Earth imagery to confirm that the site has not been damaged or cleared. Additionally, other sources of information should be checked, depending on location some LERC's may have detailed information on habitats, land may have previously been subject to a FEP prior to submission for an agri-environment scheme plan which could provide detail of past land use/habitat quality for example.

46 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

Please provide any explanation for your answer here:

Yes, the UK Government should require a long-term habitat management plan for habitat enhancement to be included on the register. This is important for transparency, as well as to monitor progress against the habitat management plan and ensure delivery of gains.

There should be a level playing field for onsite gains and offsite gains. Onsite gains should be subject to the same scrutiny as offsite gains, by being included in the national register, to be able to demonstrate management and monitoring expertise, and to be subject to external validation. Providing a Habitat Management Plan on the register is important for transparency, as well as to monitor progress and ensure delivery of biodiversity net gain in the long term. The habitat management and monitoring plan (HMMP) must be clear on the structure of the document and its contents from the outset.

3.5.3: Proposal 3 - Application fees and penalties for false and misleading information

47 Do you agree that the UK Government should allow the register operator to:

Yes

Please provide any explanation for your answer here:

Yes, we agree with the proposal to allow the register operator to set a fee for registration in line with the principle of cost recovery to ensure the register has the resources to operate effectively.

Yes

Please provide any explanation for your answer here:

Yes, financial penalties will help prevent the provision of false or misleading information.

3.5.4: Proposal 4 - Appeals against rejection of a biodiversity gain site application or non-determination of an application by the register operator

48 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?

Other (please tell us more)

Please provide any explanation for your answer here:

A less confrontational approach might help to resolve any concerns about the application of registration criteria as the first approach. This could involve, for example, a consultation with Natural England to discuss the failed application, followed by an amended submission to the register operator.

Part 3.6: Additionality

3.6.1: Proposal 1 - Additionality with respect to wider environmental planning policy and legislation

49 Do you agree with our proposals for additionality with respect to:

Other (please tell us more)

Please provide any explanation for your answer here:

This matter has important parameters to be met before additionality can be achieved on site. However, we recognise the importance of high quality, conservation specific provision on site in supporting local biodiversity and species (including protected species) and enriching the health and wellbeing of local communities. To create better places for local communities is one of your three key objectives.

To be clear, measures delivered within development sites that are part of a statutory obligation, should not count towards mandatory BNG. In addition, BCT are concerned about the lack of monitoring, reporting and enforcement to ensure the delivery of onsite net gain. It is not a level playing field with respect to offsite gain, which have more clear and transparent monitoring and reporting measures. Onsite measures are vital but to have value need to undergo the same scrutiny as offsite.

Other (please tell us more)

Please provide any explanation for your answer here:

Those measures that would occur under statutory obligations through protected species licensing do not constitute additional gains and should not contribute to mandatory BNG measures. Where truly additional to the 10% minimum statutory requirement in terms of the development's net gain delivery, these measures should be included in the calculations.

We would suggest there are times when additionality for species will occur. For instance, if there is an impacted bat roost which, once the statutory processed have been completed, provides for additional habitat provision or restoration. It could be a significant benefit to another roost that forages within this range but for which the roost and immediate surrounds are unaffected by the application. These opportunities are important to consider in

the context of Species Conservation Strategies and species targets.

Other (please tell us more)

Please provide any explanation for your answer here:

Development should not occur on protected sites or impact protected sites, it should be steered away from these sites by the avoidance principle of the mitigation hierarchy. Development that impacts the features of a protected site should not be considered to have achieved biodiversity net gain (in the same way as irreplaceable habitats).

Where a development does impact a protected site, the impact should be measured using the metric, but any compensation measures would have had to happen under statutory obligations anyway, so are not truly additional, and should not count towards the 10% target.

No (please explain why not)

Please provide any explanation for your answer here:

No, we do not agree with the proposal that actions taken for the achievement of River Basin Management Plan Objectives could contribute to the required biodiversity net gain. This is because these plans are statutory and so actions under them would have had to happen under statutory obligations anyway and thus are not truly additional to BNG measures.

No (please explain why not)

Please provide any explanation for your answer here:

No, we do not agree with the proposal that actions under the strengthened NERC Act Duty on public authorities could contribute to the required biodiversity net gain. This is because these measures would have had to happen under statutory obligations anyway and thus are not truly additional to BNG measures.

3.6.2: Proposal 2 - Enhancements in statutory protected sites for nature conservation

50 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?

Other (please tell us more)

Please provide any explanation for your answer here:

We agree with the Government's statement that the biodiversity net gain requirement is 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. We strongly agree that demonstrating and delivering genuine additionality of BNG measures in protected sites is essential.

In particular, we are concerned that there is a risk of using private finance to meet statutory obligations and goals and reducing or not increasing crucial statutory funding. There should be transparent and separate accounting processes for statutory funding and private funding, to track government conservation funding separately from funding derived from Biodiversity Net Gain, to ensure that private finance does not lead to reductions in statutory funding.

For statutory designated sites, these should not be eligible for Biodiversity net Gain payments.

For Local Nature Reserves, Biodiversity Net Gain should not be used to fund ongoing restoration or management for these sites. However, it could be used to fund the expansion of a nature reserve, by buying low quality adjacent land and delivering biodiversity net gain, with the land itself then being incorporated into the reserve.

For Local Wildlife Sites, Biodiversity Net Gain should not be delivered on LWSs that are in good condition and where there are existing commitments, duties or requirements to manage them for nature. On privately owned Local Wildlife Sites in poor condition, where there is no other feasible way of securing conservation management, Biodiversity Net Gain could be delivered on these sites.

51 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?

Not Answered

Please provide any explanation for your answer here:

No comment

3.6.3: Proposal 3 - Stacking of payments for environmental services

52 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?

No (please explain why not)

Please provide any explanation for your answer here:

There is a fundamental problem in combining environmental land payments on one piece of land that can lead to net environmental damage. This risk of asymmetrical accounting on the offset and impact side could enable overall net environmental damage. Biodiversity Net Gain itself is already an offset-type credit, compensating for environmental damage done elsewhere. So it is not appropriate to stack BNG with other offset or compensatory environmental service payments, such as carbon offset credits.

There are also concerns about a lack of robust and transparent accounting. If the registers or systems of different environmental services are not joined up and transparent, there risks double payments to one piece of land for the same measures. In any decision about combining payments from biodiversity units with other payments from environmental services on the same piece of land, a comprehensive and transparent registry system, map and accounting system, that can account for multiple types of credits is fundamental.

We do concede that combining environmental payments on one piece of land allows multiple streams of revenue in to deliver multiple benefits. It provides incentives to landowners to pursue good land management for nature and funds important nature restoration projects that may not have been pursued with just one income stream but the issues mentioned above need to be resolved.

We welcome the suggestion in the consultation that the approach to stacking would be reviewed after three years in order to evaluate its effectiveness and correct any failing policies.

Part 3.7: Statutory biodiversity credits

3.7.1: Proposal 1 - Use of statutory biodiversity credits

3.7.2: Proposal 2 - Credit price and sales

53 Are these proposals for statutory biodiversity credits sufficient to:

No (please explain why not)

Please provide any explanation for your answer here:

Statutory credits shouldn't be the easiest or cheapest option, they should be priced significantly above market value in order to ensure they are a very last resort for developers.

To avoid perverse incentives, the local off-site system should be made more attractive than the use of biodiversity credits, for example through an easier system to register for off-site gains than the process used to register biodiversity credits.

Other (please tell us more)

Please provide any explanation for your answer here:

Statutory credits shouldn't be the easiest or cheapest option, they should be priced significantly above market value in order to ensure they are a very last resort for developers.

To avoid perverse incentives, the local off-site system should be made more attractive than the use of biodiversity credits, for example through an easier system to register for off-site gains than the process used to register biodiversity credits.

54 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?

Not Answered

Please provide any explanation for your answer here:

No comment

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

Not Answered

Please provide any explanation for your answer here:

No comment

3.7.3: Proposal 3 - Credit investment

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

Yes

Please provide any explanation for your answer here:

There are useful criteria on alignment with Local Nature Recovery Strategies, underpinning with robust ecological criteria and meeting the same standards as other biodiversity gains.

In addition, the credit system should include information about the type of habitat lost and the type of habitat which is being created as part of net gain, in order to ensure transparency.

It should also consider delivery against Species Conservation Strategies.

Part 3.8: Reporting, evaluation, and monitoring

3.8.1: At a project level

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

No (please explain why not and suggest how could they be improved)

Please provide any explanation for your answer here:

We are concerned that the monitoring, reporting and enforcement requirements, in particular for onsite delivery of BNG, but also offsite gains, are not sufficient to ensure genuine gains are being delivered over the long-term.

Currently, onsite gains have no monitoring or reporting requirements. Government needs to get the governance right: onsite and offsite gains should be monitored to the same standard, a stronger level than is currently proposed.

Offsite gains are proposed to be monitored through self-reporting by landowners, which will not ensure the right expertise, training and transparency in monitoring and reporting. There should be a requirement for the scrutiny of onsite and offsite gains by ecological experts through the local planning authority to monitor and report on the delivery of offsite gains. Onsite gains must be added to the register. Local planning authorities should be required, supported by sufficient resources and ecological expertise, to monitor and scrutinise onsite gains over the full obligation period (30 years). The scrutiny of reports in a planning authority must be done by trained ecologists.

Additionally, any breach of the planning condition of BNG is practically unenforceable by the local planning authority. The Government should introduce an enforcement mechanism for local planning authorities if promised onsite or offsite gains are not delivered, as well as an enforcement mechanism to deal with any breaches.

We agree with the proposal in the consultation for a requirement to share biodiversity gain plan and monitoring report data with local environmental record centres (LERCs). As well as an obligation to submit to long-term repositories like LERCs, we would like to see the data on the NBN Gateway and shared on publicly accessible platform, such as Magic, wherever possible so that payment is not required to access the information. There should be a requirement for these data to be in national standards and formats to ensure they are compatible with wider uses. This will improve transparency and scrutiny and contribute to the overall environmental information base.

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

No (please explain why this would not help)

Please provide any explanation for your answer here:

No, we do not believe that self-reporting by a developer or an offsite BNG provider is sufficient to ensure BNG outcomes. Whilst some developers would apply the highest of standards to this reporting, third party, expert monitoring and verification is necessary for the majority of cases. Accreditation could be useful in ensuring the third party body has the expertise and experience to carry out BNG monitoring and reporting.

3.8.2: At a policy level

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

No (if not, how could they be improved?)

Please provide any explanation for your answer here:

There is not yet sufficient detail on the proposals to assess whether the policy-level reporting, evaluation and enforcement will be sufficient to ensure the success of the BNG policy and contribute to the achievement of other ambitions, such as the species abundance target in the Environment Act.

Further detail is needed on who will be responsible for this policy level monitoring, and what will happen if Local Planning Authorities fail to deliver BNG requirements.

It is certain that in order to effectively monitor the overall success of the policy, onsite enhancements will need to be clearly recorded and registered.

60 Considering the data requirements set out above and in greater detail in Annex C:

Not Answered

Please provide any explanation for your answer here:

No comment

Not Answered

Please provide any explanation for your answer here:

No comment

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

Annex B: Biodiversity gain plan template (working draft)

Annex C: Reporting requirements

Glossary

Consultee feedback on the online survey

61 Overall, how satisfied are you with our online consultation tool?

Satisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :