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Via email to: [consultation.coordinator@defra.gov.uk](mailto:consultation.coordinator@defra.gov.uk)

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## **Consultation on Biodiversity Net Gain Regulations and Implementation**

Dear Sarah,

I write as Head of Policy at the **Environmental Industries Commission** (EIC). We represent the companies, large and small, working in the environmental technologies and services sector. Many of our members have responded directly to the Biodiversity Net Gain Consultation through the online portal. This letter is aimed at reinforcing many of their points and outlining some of our own broader views and positions on these issues as a business association.

Our comments are formulated following a series of discussions with members of our Natural Capital and Contaminated Land groups. I want to take this opportunity to thank both Max Heaver of Defra and Nick White of Natural England for working with us to engage members on this important subject. Where possible, we have tried to comment directly on some of the proposals and associated questions.

### **Part 1 – Defining the scope of the biodiversity net gain requirement for Town and Country Planning Act 1990 development**

Members have reflected differing views with regards to whether developments which are undertaken exclusively for mandatory biodiversity gains (Question 4) should be exempt from the mandatory net gain requirement. Some have noted that this should be part of the calculation and any engineering operations that are needed to enable enhancement should be included in the development/calculation. Others, meanwhile, have noted that developments should be exempt, but only for biodiversity net gain improvements. Some members of EIC feel that this will not be commercially viable, and it would seem unnecessary when the purpose is to enhance the biodiversity on existing sites. Other environmental net gains could lead to biodiversity net gain losses, so some checking would be needed on, for example, carbon sequestration sites to ensure habitat value is not being lost/degraded.

Additionally. Some EIC members have expressed the view that in principle there should be exemption for development exclusively for mandatory biodiversity gain. However, the principles of BNG should be applied such that development for biodiversity gain or other environmental gain should create habitats of equivalent value or better. For example, it would not be appropriate in a grassland of high distinctiveness to construct an extensive pond or plant a broadleaved plantation woodland.

Possible unresolved issues may exist about whether biodiversity net gain/environmental net gain providers should be able to claim payment for biodiversity net gain units and for carbon

sequestration. Decisions on this could skew the market in ways which may or may not be desirable for biodiversity in England.

The question of brownfield land is also considered as part of this consultation, and it's of particular interest to members of EICs Contaminated Land group. Members feel that exemptions should be restricted as much as possible. For brownfield sites in particular, there is no ecological reason to exempt them. It is important these sites are not given exemptions from the requirement, as brownfield can often serve as ecological corridors and some provide valuable habitat in urban areas for a wide range of botanical, invertebrate and mammalian species.

While EIC continues to advocate “Brownfield First”, this should not be at the expense of good environmental practice. For the smallest sites, such as road verges associated with highways improvements (for example), and for permitted developments that do not impact on a Habitat of Principal Importance or an area of green space greater than 500m<sup>2</sup>, exemptions could be appropriate, but these must be restricted and justified in writing to the local planning authority. This will require guidance on what is considered suitable for exemption. We would be against all permitted development being exempted carte blanche as many PD projects can occupy large areas of countryside (for example, pipelines for utilities).

Similarly, exemptions should not be permitted for nationally important infrastructure, as is currently the position in the consultation. By definition these are generally large, complex projects that do involve significant habitat loss. They are also subject to rigorous scrutiny which should include assessing biodiversity gain opportunities (locally or through some form of offset via a tariff scheme). Many large infrastructure providers are already implementing their own biodiversity net gain targets so mandating it would not make a significant difference on the viability of projects.

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

On applying biodiversity net gains, EIC has previously recommended that development subject to an EIA should be required to achieve environmental net gain (ENG) as a condition of granting planning permission – there should be an ‘ecosystems services enhancement chapter’ in EIAs to facilitate this.

Additionally, the NPPF should be amended to require local planning authorities to specify the approach taken to ENG for sub-EIA projects – this would allow local priorities to be considered.

Finally, a ‘model’ chapter on ENG for local development plans should be produced and published alongside the revised NPPF to support local authorities in developing ENG policies and in promoting consistency.

With regards to site assessments for net-gains, EIC has previously recommended that broad habitat baselines should be supported by site surveys to ensure the relevance of assessments. However, if a simpler assessment is developed for development of a small scale in low value habitat, then it is possible the habitat map could be used to determine if a development was suitable to assess using a simpler assessment.

National biodiversity maps should be used by regulators if there are indications a development is, or has been, intentionally degrading habitat to reduce their potential BNG obligations for future

development. However, more advanced remote sensor technology may be needed to have the required resolution to analyse most sites.

To improve net-gain processes for developers, government could require developers to make their GIS data available for use by stakeholders. High-quality, consistent guidance and information should be made available. Local authority staff should be properly trained to be able to support developers, particularly SMEs. The proposed national mapping should be available free of cost from the MAGIC website. Developers need clarity and certainty over their potential costs to factor into their business models. If the BNG process is weakly implemented then developers will not know how to factor the impacts into their decisions, and then some developers will actively seek to avoid any commitment altogether.

### **Part 3 – How the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 Development**

On the issue of the biodiversity gain site register and its associated eligibility criteria (Questions 38 – 43), members once again expressed differing views.

Some mentioned that whilst the register is a good idea and is publicly accessible, more guidance is required to explain how the application would be determined. It is not clear how an individual or body would prove they are “fit and proper to undertake the enhancement works” or how the baseline value of the site will be validated by the register operator.

With regards to the maximum of 28 days to determine an application, members again had differing viewpoints. Some member cited that central facilitation could help with those cases where longer or shorter turnaround times may be needed.

More broadly, some members that we consulted felt that biodiversity net gain should be mandatory, reflecting the government’s main environmental principle, which is “to leave the environment in a better state for the next generation”. A nationally applicable net gain metric with varying approaches for LPAs would be recommended. This implies a policy of biodiversity net gain, or indeed, full environmental net gain. By mandating biodiversity net gain, and setting out a nationally applicable net gain metric, varying approaches across local authorities would become more standardised, which in turn creates a simpler process for business.

Furthermore, some members expressed the view that a mandatory net gain requirement would provide a mechanism to safeguard land use in the longer term. The Basic Payment scheme at present makes it more difficult for landowners who want to change land use from agricultural production to biodiversity offsetting, because the BPS is only payable on agricultural land. A new UK version of the Common Agricultural Policy (CAP) post-Brexit is an opportunity to address this. Setting a high tariff price would better stimulate the growth of a market for biodiversity units, because it would make offsetting a viable alternative form of land use. However, there is a need to consider the services provided by the land – and not lose vital services such as food production simply to achieve.

Regarding the application fees and issuing of financial penalties if an applicant submits false or misleading information (Question 42), members were in broad agreement that it was considered a reasonable request to ask for a fee to be charged for registration to cover the cost of administration. This would be needed to help provide a strong and transparent way of tracking and monitoring off-

site biodiversity gains. Off-site providers should also be able to pass on these costs to the developer in line with the principle of cost recovery.

On imposing financial penalties for provision of false or misleading information, members were again broadly supportive of this principle. Thorough checks should be in place and appropriate financial disincentives would be needed. This would help raise confidence in the system and secure delivery of the environmental benefits.

Finally, on appeals (Question 43) some members were in favour in order to allow applicants to appeal decisions from the register operator, however, some members expressed the view that appeals should be a last resort, as they could be time-consuming and expensive for all stakeholders involved.

On biodiversity credits (Questions 48 – 50), and the use of these credits as a last resort, again a divergence of opinions was expressed. Some members feel this is the appropriate way to use these credits. However, some members expressed the view that there could be some merit in using these credits as suitable guidance with market incentives/disincentives to provide on-site as a possible first option, with off-site locally as a second option, and off-site statutory credits as last resort.

For mitigating the market risk associated with the sale of these biodiversity credits, some members felt that while developers should purchase credits prior to final approval of the biodiversity net gain plan, the proposals do not seem sufficient to mitigate market risk. This should also encourage developers to use up all potential on-site, off-site and market options before purchasing statutory credits as a last resort, whereas offering payment for credits upfront may jeopardise this approach.

On credit investment, members were broadly positive about the proposed principles for credit investment. However, members were eager to see further examples on how this could work and noted the importance of ensuring a traceable link between an individual development that has purchased credits and specific sites that have received that investment should be provided, even if not publicly accessible, for auditing purposes during reviews.

Members expressed mixed opinions on monitoring, reporting and enforcement (questions 52 – 53). Issues explored during our discussions focused on whether budgets for this are ring-fenced, and whether there is scope for wildlife police officers to have a greater role with the enforcement and financial penalties elements.

Some members also commented that most of the monitoring and management should occur within the first 12 months of any planting, and then within the first five years – reflecting the standard period of landscape maintenance, planting contracts and watering etc.

More broadly, members welcomed the use of standardised processes and reporting templates which should help to clarify the expectations and quality of the assessment and data submitted, though further guidance on monitoring is required.

Finally, on monitoring at policy level (questions 54 – 55) members were of the view that some areas will struggle to deliver enhancement monitoring and collect habitat survey data to indicate the extent of success or failure of habitat enhancements.

Concerning the topic of additional data requirements and Annex C, members expressed views that qualitative biodiversity net gain measures must not be de-prioritised when compared with quantitative measures, that key qualitative information on proposals includes ecological connectivity and information as to how anthropogenic / human disturbance can be limited, and that a checklist could be used for qualitative measure considerations.

In conclusion, our members have welcomed the opportunity to submit evidence to this consultation. As the business association representing these members, we are very grateful for the opportunity to reinforce some of their points and provide some additional information. We look forward to engaging with you on the next steps of the implementation. Should you require any further information on our response, or indeed EIC and its members more generally, please do not hesitate to get in touch,

Kind regards,

Guto Davies  
**Head of Policy**  
**Environmental Industries Commission (EIC)**