

CONSULTATION

Response Document



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Biodiversity Net Gain (Defra)

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Introduction to CIEEM

The Chartered Institute of Ecology and Environmental Management (CIEEM), as the leading membership organisation supporting professional ecologists and environmental managers in the United Kingdom and Ireland, welcomes the opportunity to comment on this consultation.

CIEEM was established in 1991 and has over 5,000 members drawn from local authorities, government agencies, industry, environmental consultancy, teaching/research, and voluntary environmental organisations. The Chartered Institute has led the way in defining and raising the standards of ecological and environmental management practice with regard to biodiversity protection and enhancement. It promotes knowledge-sharing through events and publications, skills development through its comprehensive training and development programme, and best practice through the dissemination of technical guidance for the profession and related disciplines.

CIEEM is a member of:

- Environmental Policy Forum
 - Greener UK¹
 - IUCN – The World Conservation Union
 - Professional Associations Research Network
 - Society for the Environment
 - United Nations Decade on Biodiversity 2011-2020 Network
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¹ Supporter Member

Comments from CIEEM

Introduction and General Comments

CIEEM, along with IEMA and CIRIA, has been actively promoting consideration of the Biodiversity Net Gain (BNG) approach, jointly publishing *Biodiversity Net Gain: Good Practice Principles for Development* in 2016 and subsequently working together on associated guidance for delivering BNG through development which will be published later this month. We are also involved in the development of a British Standard for BNG and will be working with other partners, including Natural England, on issues around validating claims of BNG delivered through development projects.

Accordingly, we strongly welcome the fact that the Government has taken such a positive stance in exploring the rationale and risks for this potentially transformative approach and we have been particularly pleased to see the 'joined up' thinking between Defra and MHCLG in preparing and promoting this consultation exercise.

We believe that BNG can be an effective 'tool' to reverse biodiversity loss through development, although we also believe that the approach could be successfully applied to agri-environment land management as part of an integrated land use strategy. It is disappointing that this has not yet been fully explored by Government. We also note that there is considerable risk around the BNG approach and it will be essential to any future policy or legislative changes that these risks are fully acknowledged and properly managed in order to avoid undermining its credibility. With this in mind, we urge the Government to continue to engage fully with stakeholders to properly address these risks in its future proposals.

Our response summary:

1. Development should deliver BNG from development as a mandatory requirement.
2. We believe that a model can be developed whereby the existing burdens on planning authorities are reduced by a regulatory framework delivered by a mandated system.
3. We believe delivery should be local to sub-regional and that Local Planning Authorities (LPAs) should be involved in collecting the funds.
4. BNG should be delivered first and then, if effective, over time other asset classes (i.e. wider Environmental Net Gain) can be introduced.
5. BNG should be introduced as soon as practicable.
6. Careful consideration needs to be given between the balance of off-site and on-site delivery.
7. The point at which a claim of net gain is made is going to be critical in terms of the credibility of the approach. There may need to be multiple points at which BNG is validated (e.g. design, implementation and post-implementation). CIEEM has a number of ideas as to how this might be achieved and is keen to work in partnership with others to address this need.
8. CIEEM is exploring collaborative approaches to assessment, monitoring, quality assurance and accreditation of BNG and those delivering BNG.
9. We would welcome the opportunity to further engage with Defra on the implementation and delivery of BNG.

Responses to Consultation Questions

1. *Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?*

Yes. CIEEM supports mandating BNG but we strongly emphasise that the adherence to the mitigation hierarchy, along with strong planning policy and monitoring/enforcement, must underpin this in order to achieve the best outcomes for biodiversity.

There must also be a clear policy on irreplaceable habitats, which will secure a commitment to protecting all irreplaceable habitats (e.g. ancient woodland, peat bogs), not just offsetting impacts. A clear list of irreplaceable habitats must also be provided.

BNG needs to be mandated in order to provide equality of opportunity and obligation for developers across the country, to provide consistency across all planning authorities within the planning system and to properly treat biodiversity as a material consideration in planning (which it is not outside of SSSI, SPA and SAC level designated sites).

The consultation document states that the government will only mandate BNG if it is satisfied that it will deliver benefits for development, including greater clarity and process cost savings. However, the primary goal of mandating BNG should be to halt and reverse the decline in biodiversity and to enhance and increase our natural capital for the benefit of all; thus BNG is not just about benefiting development, it is a tool to meet our national and international nature conservation obligations and should be recognised as such

The proposal to mandate BNG is strongly supported for most development but it must be underpinned by robust evidence, and its effectiveness should be regularly reviewed. The process is likely to increase the burden on LPAs and developers. However, this should not be taken as a reason not to pursue it, but rather it should be accepted and adequately recognised and resourced through the setting of appropriate tariffs and provision of adequate support to LPAs and Local Record Centres. It should also be recognised that, whilst there may be financial burdens to developers, there are other important corporate benefits, as evidenced through a number of developer testimonies and case studies.

2. *What other actions could government take to support the delivery of biodiversity net gain?*

Strengthening the NERC Act (2006) would be a positive step; emulating the approach taken by the Welsh Government where all public authorities – including all departments of government – are now required to give full consideration to ensuring that their activities and decisions have a positive impact on maintaining and enhancing biodiversity.

This would strengthen the much-criticised Section 40 duty which has clearly failed to have the required impact over the 12+ years since it was instituted. Local authorities vary widely in the degree to which they address the current “*have regard to*” obligation and a major positive action which government could take – via the forthcoming Environment Bill – would be to address this disparity by:

- strengthening the duty;
- clarifying the obligations; and
- communicating the benefits of an effective BNG regime to local authorities.

Other actions that could be taken by government include:

- Ensuring that guidance is produced and training is provided to show how LPAs can integrate BNG into local development plans (LDPs) (e.g. core strategy). This should include assessment, implementation, management and monitoring of BNG. Training should be provided not only to local authority planners but also to Planning Committees.
- Ensuring that all LPAs have access to competent ecological expertise and advice (preferably in-house) to assess BNG proposals and requirements and ensure they are adequate.
- Ensuring that LPAs have the necessary funding to implement – and more importantly, monitor and enforce – BNG. This could be provided by brokers paying the LPAs if a market can be created through mandating BNG.
- Ensuring that Local Environment Record Centres (LERCs) are appropriately resourced to provide sufficient services to LPAs to underpin delivery of BNG through the planning system. This will address the long-standing problem of planning applications being framed without reference to existing biodiversity information and/or the variability in the quality of that information when provided. The alternative would be to set very clear requirements for when a data search will be mandated and to make this part of the validation for an application.
- Improving protection for local wildlife sites and priority habitats through the planning system.
- Ensuring that BNG policy is applicable to all projects (other than those specifically exempted) – including Nationally Significant Infrastructure Projects (NSIPs) – to ensure that the so-called ‘burdens’ are fair across all developers and that the opportunities for biodiversity enhancement are maximised.
- Natural England and partners, including CIEEM, are already working with the British Standards Institute (BSI) on a new British Standard for Biodiversity Net Gain. We suggest that there should similarly be a standard for LPAs regarding their delivery of BNG through planning (or at least a publicly available specification (PAS)) as this will clearly set out the Government’s expectation of LPAs and what they need to do to make this approach work.

3. *Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?*

a. House extensions

b. Small sites

c. All brownfield sites

d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

We consider that only private household extensions could be exempt. However, even this will require criteria and appropriate guidance to ensure that the exemption is justified (and to avoid the potential for cumulative or additive effects of piecemeal applications). Local plan policies requiring biodiversity enhancements such as in-built features (e.g. integrated bat roosts, sparrow terraces and swift bricks) could be used as a way of securing enhancements through householder applications if not exempt. It must be noted that any exemption scheme will create an added burden on local authorities to implement it.

Small sites should not be included as an exemption. This is because the size of the site does not necessarily determine the size of the biodiversity impact and there could be a cumulative detrimental impact on biodiversity if these are not considered, particularly at local and district level.

Brownfield developments should not be included as an exemption. Cities such as London and Manchester recognise the importance of brownfield sites, many of which are essential for invertebrate diversity as recognised by Buglife and other NGOs, and are often Biodiversity Action Plan Habitats (e.g. Open Mosaic Habitats on previously developed land).

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

No.

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

Small private developments/extensions could be subject to a simple flat tariff system set by the LPA, with the money ring-fenced for investment in additional (i.e. not funding existing staff) biodiversity-related activities undertaken by the LPA at the discretion of the Planning Committee.

6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?

Yes. Adjustments could be made depending on geographical locations, where certain habitats are more valuable, and could change the habitat distinctiveness of the metric. It is essential that local wildlife sites and other areas of important undesignated habitats are properly protected, and must not be subject to a metric that is not only a simplified proxy but which will always claim that more valuable habitats can be created as long as the developer has access to sufficient land for compensatory habitat creation or access to a tariff system.

It is important to bear in mind that land that is undesignated or designated as a local site can still be of a very high level of importance (e.g. SSSI quality or similar). The SSSI system was not designed to protect all areas of habitat which are over a certain quality threshold; while it may now do so for certain rare and endangered habitats, for most habitat types only representative samples within each area of search are designated². Therefore, by definition, the SSSI system will only protect a proportion of nationally important sites. Consequently, it is incorrect to regard the SSSI system as providing protection for sites of national importance and the local sites system as protecting sites of local importance; while the local sites system provides protection for sites of 'at least' local importance, many of these are of much greater value than that. Accordingly, it is imperative that the role of the local sites system in protecting many sites of much more than just local importance is recognised, and they are protected from loss through a metric-based system.

² Bainbridge, I. et al (2013) *Guidelines for the Selection of Biological SSSIs: Part 1: Rationale, Operational Approach and Criteria for Site Selection*. JNCC, Peterborough (p.40, para 11.1)

As the metric needs to be applicable across England, a generic approach is needed. In order to mitigate for these local differences, this could be achieved through a local layer which could be applied by the LPA, that provides a high-resolution local layer (GIS layer) to ensure that net gain implementation is actively encouraged.

Within heavily urbanised areas the application of an urban greening factor (as adopted under the London Plan in Greater London) may be a more practicable approach than the metric.³

7. *Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?*

No. Whilst the district level licensing (DL) approach to great crested newts (GCN) could bring some key benefits to the conservation of this species in some circumstances, it is vital that evidence-based results for the current strategy are published to show that it has brought benefits to the favourable conservation status of the species through this licensing before it is rolled out further.

In our view, 2020 is too soon for nationwide mandatory adoption of GCN DL, as there is still considerable work to do in up-skilling local authorities and gathering the necessary baseline data and evidence to show that the risks can be managed effectively.

We have set out our concerns regarding GCN DL more fully in a position paper (see Appendix 1).

8. *For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.*

CIEEM's view is that, at present, DL should not be extended to other species.

Any future extension of the DL approach to other species, or developing similar strategic approaches, will need to be very carefully considered on a species-by-species basis.

Relevant considerations should include, but not necessarily be limited to, the current conservation status of the species concerned, the ease (or otherwise) and speed of alternative habitat creation of equal or superior quality to that being lost, the ability of the species to naturally colonise new habitat, and their reproductive rates.

As a first step, Natural England would need to identify what favourable conservation status (FCS) is for each species involved.

9. *Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.*

The wider use of environmental net gain (ENG) could be used for multi-functional greenspace, where habitat creation is the first priority, but where there are additional benefits to the local community such as improved air quality, flood risk alleviation and climate change mitigation.

However, different aspects of environmental benefit cannot, and must not, be traded off against each other. For example, it would not be acceptable to lose some biodiversity but improve air quality.

³ [It should be noted that the Greater London Authority has also sought to encourage the adoption of biodiversity net gain, with this likely to apply best to outer London Boroughs or proposals affecting London's Sites of Nature Conservation Importance (SINCS).]

We would encourage incentives that increase access to high quality natural green space in new housing developments. Green Infrastructure (GI) standards were referenced in the 25-Year Environment Plan and ensuring cross-compliance between well-designed multi-functional GI and BNG initiatives will help maximise opportunities for an ecologically functional landscape which also improves human health and well-being, and enhances natural capital assets and ecosystem services.

We understand that some local authorities are already using a modified metric to include wider sustainability benefits such as Green Infrastructure in the scoring.

Incentives that could be offered to developments that provide more than the minimum BNG required could include:

- Tax breaks (e.g. no VAT for net gain contributions)
- Positive planning gains (e.g. contributing towards sustainability scoring)
- Promoting financial incentives (e.g. creating and managing net gain habitats which may be cheaper to maintain than typical amenity provision which is subject to high maintenance costs)
- Positive PR (e.g. possibly including an accreditation mark or logo)

10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

Pragmatically, there needs to be a simple tool to measure BNG. However, we must recognise the limitations of such a tool and use it accordingly. Notably, irreplaceable habitats must be outside the scope of the metric.

As the Natural England document *Updating the Defra Biodiversity Metric* states, the metric is only a proxy for biodiversity value which is kept deliberately simple to make it of practical use. The inputs into the metric are restricted to basic features of a site (broad habitat type) and often subjective assessments of characteristics such as condition and distinctiveness, and converts these into a precise number. However, because of the limited nature of the assessment and the range of important attributes that are excluded (e.g. presence of species of conservation concern, invertebrate communities, the nature and health of vitally important supporting systems such as mycorrhizal communities, etc.), sites of widely different ecological value could be given exactly the same numerical value by the metric. This is equally or even more true when it is used to determine the biodiversity value of a proposed compensatory habitat creation scheme, with the wide range of uncertainties involved in that

Interpretation of the metric must be undertaken by an appropriately competent ecologist, who has the skills and understanding to evaluate both the data being put into the metric and the output scores calculated. There is a danger that it will be assumed that a simple metric can be applied very simply, when the reality is that there a number of important ecological considerations that need to go in to the data that is input and the interpretation of the output.

It must be remembered that the metric is just one tool that can be used to demonstrate BNG. It should not be considered in isolation and must be considered within the wider process of the mitigation hierarchy.

Additionally, the metric only measures habitats. Consideration must also be given to species.

11. What improvements, if any, could we most usefully make to the Defra metric?

The Defra metric could be improved by considering the following:

- Updating it so that it is in line with national targets for priority habitats, including the Biodiversity 2020 goals and the UK Post-2010 Biodiversity Framework.
- Currently the metric sets a limit on monitoring at 30 years. This is not long enough as ecological succession occurs over much longer timeframes. For example, even for relatively 'simple' habitats such as grasslands, the soil structure may have taken hundreds of years to develop. We recommend that monitoring extends to 80 years and that the site is secured in perpetuity.
- Updating it to ensure that, alongside the JNCC's Phase 1 Habitat categories, which is still a vital tool for classifying habitats, the new UK Habitat Classification is included in distinctiveness bands.
- Ensure that there are clear definitions of habitat condition and distinctiveness that can be applied regardless of region within England, and that they are easy to use. The definitions should be clear on each level from 'high' to 'low'. The current metric does not provide a detailed enough definition of these bands. The habitat condition section could also recognise local features and designations.
- An additional multiplier is needed in the metric for the presence of protected or notable species to reduce the risks of exacerbating the loss of this element of biodiversity.
- Ensure that the multiplier for off-site delivery of BNG is sufficient to incentivise greater adherence to the mitigation hierarchy.
- Habitat connectivity is an important factor that should be taken into account in the metric alongside habitat area. The metric should ensure that where fragmentation of habitats will occur within a development that the metric takes into account linking important habitats on a wider landscape level. This would help deliver the Lawton principles of 'more, bigger, better and joined'.
- Ensure that biodiverse green roofs, and SuDS are included, and the potential biodiversity value of brownfield sites is measured appropriately.
- Green infrastructure (GI) and its associated guidance should be considered within the metric, if not already done. This in particular should have greater consideration in large urban areas, such as London, where GI can make a great difference to biodiversity in a local area.
- Ensure that the tool is easy to use, and in an accessible format.
- Ensure that greenspaces that serve multiple purposes (e.g. recreational lakes, public space, etc.) are considered within post-development scores for the metric, but assessed appropriately to ensure that their primary purpose is for habitat gain.
- Ensure that the metric is applicable to and accounts for small sites; and has the capacity to consider linear features and connectivity.
- Consider giving Local Strategic Significance a higher multiplier.

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

No. We suggest that 10% may be within the margin of error for the valuation of habitats, and given the simplifying nature of the metric and set against the continuing decline in biodiversity, we believe that this figure is too low to deliver real benefits. At most it might achieve no net loss.

We would like to see a minimum 20% increase required, accompanied by clear requirements to account for the sources and likely accuracy of the data, for example distinguishing between field survey data (and the age of such data) and estimating area from online maps.

If 20% net gain is to be used as a starting point, this will need to be tested and a review process established to see how schemes perform against this target gain. Government must also set out what would happen if this 20% increase is not reached, and the implications stated (i.e. how this will be addressed).

Additionally, the percentage increase will need to consider a shifting (dynamic) baseline to account for ongoing decreases in biodiversity over time in line with national trends (i.e. calculate the 20% net gain based on a future baseline). We recommend this approach over a static baseline measured at a particular point in time.

We agree that a minimum mandatory requirement must be adhered to, to ensure that the Lawton principles (more, bigger, better and joined up) approach is applied. For the above reasons we suggest that 20% is set as the minimum requirement.

13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?

No. Any proposals which facilitate off-site compensation without first fully exhausting on-site mitigation and compensation measures (i.e. the mitigation hierarchy) would be weakening existing planning protection for the environment and the principle of first avoiding harm.

We must also be clear that BNG is not compensation, it is enhancement.

14. Would the proposed spatial preference approach be an appropriate approach to directing the location of new habitat?

Yes. However, the mitigation hierarchy must be adhered to and the metric multiplier must strongly incentivise local habitat provision.

15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

Inevitably there will be additional burdens for some LPAs because we would be moving to system where more account of biodiversity would need to be taken in the planning system, both at a strategic planning level and in development decision-making. However, that is not a reason to not implement this approach. Instead those burdens need to be managed. The recruitment of more in-house local authority ecologists (and or more resourcing of access to external ecological expertise) is fundamental to ensuring that BNG assessments and LPA decision-making is robust. This point cannot be

over-emphasised as there is evidence⁴ that LPA planners do not have the confidence or competence, regardless of time constraints, to understand and deal with biodiversity issues effectively.

Training and assessment should be introduced to ensure that LPAs do commit to having the resources and expertise to deal with biodiversity assessments. However, it is also vital to the credibility of BNG, and to lessen the responsibility on LPAs, to ensure that the quality and rigour of BNG assessments and schemes are done to a high standard. This is especially important because planning applications are often challenged and delayed on the basis of ecological considerations, especially where the underpinning ecological survey and reporting has been done to a poor standard.

A minimum field survey and assessment training requirement would ensure that a standard is set for ecologists carrying out baseline habitat/ecological surveys for BNG. CIEEM would be happy to explore an accreditation approach similar to that which we are undertaking for Ecological Clerks of Works (ECoW) and the work we are doing with Natural England and BCT on Earned Recognition for consultants undertaking licensed bat work. This could involve identifying the competencies that are deemed necessary for designing BNG, using CIEEM's professional competency framework as a basis. Additionally, ecologists could be required to have a BSBI certification to the minimum of a FISC Level 3, which is considered to be the level of an individual competent in Phase 1 Habitat Survey. This training would provide more reliability in net gain requirements pre-development, in particular for the habitat distinctiveness and condition categories of the metric.

All metric calculations should be supported by a 'BNG report' – which presents the supporting baseline data and clearly sets out how calculations were undertaken – to make LPA assessment easier. It is important that the BNG report meets standards which make it fit for purpose; the report must be placed in the public domain making the planning process accessible and transparent for all stakeholders. Given that fewer than 30% of LPAs retain in-house ecological expertise, any form of BNG requirement placed upon LPAs to determine should be allied with the resources required to administer. These additional governance duties on LPAs to validate, evaluate, monitor and enforce BNG reports and BNG commitments will require a proportion of the tariff to meet existing and predicted capacity shortfalls, or there will be a risk of delays and disparities arising for developers from one administrative boundary to another.

Another possible approach would be to develop a certification scheme for consultancies rather than individuals (perhaps along the line of IEMA's Quality Mark for Environmental Impact Assessment), but for designing and delivering BNG schemes. This would recognise consultancies that provide appropriate training for staff, establish good practice protocols for BNG design and delivery and commit to sharing knowledge and evidence on a regular basis. CIEEM would be very willing to consider the scope and mechanism of such a scheme and report back to Defra more fully.

It must be stressed that BNG does not stand in isolation. Ecological impact assessments will still be required for the many important elements excluded from the metric, which at the moment include protected species and off-site impacts. Furthermore, the reliance that the metric places on habitat data alone means that these data must be as accurate as possible – some habitat survey data may need to be collected outside of the optimal survey season, but it is imperative that the work is undertaken by demonstrably competent ecologists.

Furthermore, a key part of the process is ensuring that what is designed is delivered. CIEEM recommends that consideration is given to a BNG inspection and approval scheme similar to the current Building Regulations Inspection and Approval requirements. The funding of such a system would be a legitimate use of tariffs.

⁴ Oxford, M. (2013) *Ecological Capacity and Competence in English Planning Authorities*. Association of Local Government Ecologists.

16. Should a baseline map of broad habitats be developed?

Yes. A baseline map covering the entirety of a local authority's area and ideally including a buffer beyond – further where there are sites/complexes which extend beyond this zone – would be a vital component to deliver net gain ambitions. However, although a baseline map of broad habitats would help LPAs to identify their own priorities for habitat delivery, it must not replace the need for site specific evaluation and survey.

Mapping of broad habitats will give an indication of how much of each of these is/was currently extant, and the size, distribution and degree of existing (and potential) connectivity within a local authority's area. This could provide a basic snapshot against which to map progress or possible deliberate efforts to degrade areas prior to development, as well as a basis for local planning and stakeholder engagement. It could also be used to prevent multiple offsetting into a single site.

In order to provide the necessary detail, baselines should ideally be mapped at a priority habitat resolution to provide the needed understanding and a growing spatial database of what is to be found within a local area currently.

Over time, the condition and distinctiveness of habitats change (e.g. degradation), therefore such a baseline map will require updating regularly in order to be accurate and fit for purpose.

The use of satellite and aerial mapping as well as drones could assist baseline mapping of habitats.

17. Should this be applied, as a minimum baseline, to:

a. net gain calculations for all development?

No. This is no substitute for an up-to-date site survey by an appropriately competent ecologist, and routine use of these data will only further reduce the quality of information being fed into the metric, which can only worsen outcomes. CIEEM is shortly to publish some advice for LPAs and developers on the validity of survey data.

b. net gain calculations in cases of suspected intentional habitat degradation?

Yes. These data could be useful as evidence in cases of suspected degradation, to be used in conjunction with any other available evidence to determine the likely nature of the site pre-degradation.

18. What other measures might reduce the risk of incentivising intentional habitat degradation?

Below are some potential measures that could reduce the risk of intentional degradation:

- Where intentional degradation can be shown to have occurred (whether via the baseline map or other evidence), there must be punitive measures in place to discourage others from doing the same. This could include requiring the creation or restoration of habitat that is better in condition and extent than the original habitat prior to degradation.
- A process of assessing habitat condition of land earmarked for future development in Local Plans (however we also highlight that there are many, and an increasing number, of development sites that do not feature in Local Plans that would be missed). This condition assessment should be carried out on the biodiversity value so that this could be banked for future

use, therefore if habitat degradation was to occur this could be recorded against the condition assessment to see if there are any changes in the habitat quality. This process could be similar to that undertaken for BREEAM which requires a 5-year prior-to-submission baseline.

- Negative publicity is likely to be a disincentive in some (but not all) instances, and should be used as necessary.

19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?

We are unsure how often this happens and suggest it is dealt with on a case-by-case basis. Looking at the historical use of the site, for example through aerial photography, and land classification could provide an insight into any changes.

20. The provision of compensatory habitats would need to be guided by habitat opportunity maps. At what scale should these maps be developed?

- a. Locally (e.g. local authority or National Character Area)**
- b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally**

Habitat opportunity maps should be developed locally, based on local authority and/or Local Nature Partnership areas, to underpin Local Plans. As set out in the consultation document these maps can help LPAs to fulfil a range of obligations towards the natural environment, and so developing them at the local authority level will maximise their usefulness to LPAs and therefore maximise the benefits that they can bring.

Developing habitat opportunity maps at a local scale will allow key local knowledge of the habitats within the district or local authority boundary, and capture the distinctness of a particular area. This could also provide a better idea of funding opportunities.

This could build on Biodiversity Opportunity Area mapping which already takes place as part of some Local Plan delivery; but this information can be hard to track down and resolution of mapping is typically poor.

Local level resolution of habitats can be developed, particularly in partnership with the local environment record centres, planners and local authority ecologists, and NGOs to provide a more coherent strategy for assessing compensatory habitats. Local scale maps will also provide better knowledge of how to connect habitats and provide a joined-up approach.

In addition, we recommend the development of a national natural infrastructure plan, which could guide strategic local delivery in the wider context. We suggest a nested system of national, regional, local and neighbourhood plans.

21. What other measures should be considered to identify biodiversity and natural capital priorities?

Safeguarding important wildlife sites is one of the highest biodiversity priorities. In the context of this consultation this means providing robust protection for sites that should not be put at risk of being lost through an offsetting approach, either because they are irreplaceable or because there is insufficient evidence concerning the validity of the metric to put sufficient weight on its outputs.

The following measures could also be considered:

- Flooding/catchment management plans (e.g. Critical Drainage Maps)
- Air quality mapping
- Ecosystem services mapping
- Geology (Landis/GeoDiversity)
- Landscape mapping (Natural Signatures/Landscape character areas)
- London Atlas
- Tree Canopy Cover mapping
- BAP/Local Plans
- MAGIC (e.g. priority habitat mapping)

22. *Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?*

It is anticipated that there would be a supply and demand for biodiversity units, but this cannot be guaranteed at this stage. If mandatory, net gain should stimulate a market, provide confidence, and ensure that biodiversity unit impacts are calculated such that higher quality habitats would make it very expensive to develop these areas.

There is a risk that the development of a national tariff-based system will weaken the development of local habitat creation markets; the convenience of the tariff system and the potential for well-resourced national providers to vigorously promote this approach could potentially act to the detriment of developing a supply of local habitat compensation sites, although the latter will generally provide the more appropriate outcomes ecologically and to local communities. Therefore, the focus should be clearly on incentivising the development of supplies of sites locally and against a national tariff system. However, multipliers should not be relied upon to achieve this as these costs can so easily be factored into land prices rather than acting as incentives to push the development of the market in particular directions.

23. *What further measures would help to ensure that the market provides:*

a. Sufficient biodiversity units for development?

Encouragement should be given to local authorities to estimate the likely demand for biodiversity units within their area (based on the projected scale of development annually over a 5-10 year period) and the likely extent to which BNG/urban greening should/could be delivered on-site or locally. Some may also be encouraged to over-provide for their own needs where it is likely that neighbouring authorities lack opportunities for local gain delivery.

b. Cost-effective biodiversity units?

There should be clear limits, including both lower and upper, on the cost of a biodiversity unit, relative to the value of the development site within the planning application. The level of demand should ensure that unit costs will be reasonable in relation to the value gained from the development within the local area.

The BNG market needs to be stimulated such that a small number of offset providers cannot dominate delivery. This could potentially include the development of a standard pricing structure and/or capped rates.

CIEEM would be happy to explore the possibility of accrediting brokers to add reassurance to this process.

24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

The duration of maintenance should be as long as possible. Net gains need to be recorded and mapped to ensure that sites are maintained for the prescribed duration.

It is critical that all BNG delivered within the development site must be subject to the same timescales, the same monitoring and reporting and the same restorative measures if found to be failing. There cannot be two standards – one for on-site and one for off-site.

An exception to the minimum duration could be for a development that is temporary in nature and after which the site is returned to a state of at least as great a biodiversity value as it was before the development was undertaken.

The consultation fails to address the critical issue of who will be responsible for determining if compensatory schemes are delivering what was agreed, and how failure will be addressed in situations where it is clear that compensatory schemes are not delivering what was agreed, especially if this becomes evident many years or some decades after the development has been completed. Brokers will have a key role in working with landowners to deliver created or enhanced habitats. Brokers should bear some of the responsibility for ensuring what is promised is delivered. The Government might want to consider an accreditation or certification system for BNG brokers.

CIEEM is proposing to work in partnership with others, including Natural England and the Association of Local Government Ecologists (ALGE), to explore the potential for a multi-stakeholder approach to assessment, monitoring, quality assurance and accreditation of BNG and those delivering BNG.

25. If so, what should the minimum duration be?

- a. Less than 25 years**
- b. 25 to 30 years**
- c. Longer than 25-30 years**
- d. Permanent**

We suggest that 30 years should be the minimum length of time for which management should be secured; with some flexibility for adaptive management as conservation objectives may change over this time period.

This minimum duration should be mandatory, even for habitats considered to be of lower difficulty in creating, such as hedgerows and ponds which will require long-term maintenance and monitoring to ensure that they serve their purpose (e.g. ponds can easily silt up and dry out if not managed). This is even more important where the replacement of rarer habitats is considered in which higher maintenance is required, examples include lowland bogs, rarer grasslands and heathland which can take potentially hundreds of years to form.

26. *Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?*

Yes. Conservation covenants could be an effective mechanism to secure the management of compensatory sites in perpetuity is an essential prerequisite to any system of compensatory habitat creation. They must however be designed properly, effectively enforced, and financed appropriately.

The Law Commission has made several recommendations⁵ that should be taken forward if conservation covenants are to be used.

27. *What safeguards might be needed in the implementation of conservation covenants?*

Effective monitoring will be vital to ensuring that conservation covenants are working. This will require appropriate funding to ensure that monitoring can take place and for appropriate enforcement procedures if required. This funding should be part of the capitalisation of the conservation credit value paid by the developer.

Additionally, the covenant will need to be monitored by an appropriately independent body with the necessary legal/financial powers to enforce compliance.

Covenants must be publicly available to ensure that the information and requirements of the covenant are transparent.

28. *Does this proposed range for tariff costs fit with the principles set out in this section?*

We are unsure if the tariff costs are appropriate for the funding required for a full cradle to grave delivery of BNG, including the feasibility study, land acquisition, habitat creation, management, monitoring and auditing costs.

The tariffs must ensure that there is adequate funding for the above, and that tariffs are not set at a level that disincentivises developers from fully exhausting all options in the mitigation hierarchy before moving to compensation as the cheapest and easiest option.

29. *Would this proposed range for tariff costs provide opportunities for cost effective habitat banks and compensation providers to compete?*

⁵ <https://www.lawcom.gov.uk/project/conservation-covenants/>

There is a concern that the tariff system could potentially weaken the development of a market in local compensatory sites, as is the capacity for any multipliers to be factored into land prices rather than acting as incentives to develop the supply of local sites rather than a national tariff system.

30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.

It is vital that calculations are based on long-term management of sites, to avoid the system simply becoming a way of deferring impacts rather than creating net gain.

The rate must also take account of the costs of managing and auditing the system, including for LPAs.

31. How should the tariff revenue be collected?

- a. Locally (e.g. through a local authority)**
- b. Nationally (e.g. through Natural England or another national body)**
- c. Other, please specify**

Tariff revenue should be collected locally through the LPA, as this will be an integral part of the planning system that delivers BNG. The LPA could have the option of diverting funds to a broker or Natural England if desired.

The Government must require LPAs to ring-fence funds collected for the delivery of BNG. These monies must be used to deliver BNG. There will need to be auditing of LPAs to ensure this.

LPAs must however be adequately funded to administer this service.

32. How should the tariff revenue be spent?

- a. Locally (e.g. through a local authority)**
- b. Nationally (e.g. through Natural England or another national body)**
- c. Through a blended model, allowing spending at both levels**
- d. Other, please specify**

The default position should be to spend it locally, to avoid the risk of nature being 'exported' from areas of development pressure. If that happened it would be harmful to local communities as people would have less contact with nature, and disruptive to ecological networks.

However, there may be exceptional circumstances where the best outcomes can only be achieved by spending it outside (or across) the LPA boundary. This may be at the sub-regional level, however the presumption should very strongly be towards local expenditure.

LPAs could justifiably include an administrative cost element in the tariff which would defray some of the resourcing implications.

33. If tariff revenue was collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?

Spending should be proportionate to the income generated in different areas, to avoid the transfer of land being managed for biodiversity between areas, for the reasons discussed in Question 32 above.

34. What further measures will help to prevent burdens on local authorities increasing?

New duties are only burdens if they are not funded properly. Therefore, it is essential that appropriate funding levels are built into the scheme to support the work required, on an ongoing basis. This includes for auditing delivery, monitoring outcomes and reporting on how they are meeting the duty to deliver biodiversity gain.

35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?

These impacts are a concern, however the requirements of a mandatory system are likely to become sufficiently reflected in land prices to avoid it becoming a significant problem as users become familiar with the system.

There is however a risk that land prices are not affected and other aspects of development are impacted. For example, developers may seek to negotiate a reduction in affordable housing instead. This is not our area of competence, however we would suggest that affordable housing quotas should be enforced.

36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:

- a. local authority administration?**
- b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?**

We recommend that the system as a whole be managed by local authorities. This will allow the BNG process to be incorporated as a coherent part of the Local Plan process and would be the best way of securing maximum benefit for nature and for local communities.

Therefore, it would make sense for this to include tariff payments, rather than having to create a separate system for this one aspect. However, the administration of this must be funded appropriately in itself as well.

We recommend that LPAs are required to incorporate BNG as an explicit principle within their LDPs, which could be required through future revision to the NPPF and NPPG. Spatially mapping Nature Recovery Networks (in collaboration with Local Nature Partnerships) would ideally also be a requirement of development plans and/or to be articulated within future Supplementary Planning Documents (SPDs).

There is an existing 'Duty to Cooperate' placed on LPAs through the Localism Act which was designed to maximise effectiveness of policies for strategic matters in Local Plans. While guidance on this has more recently moved emphasis towards 'statements of common ground' between LPAs there is still room to use this tool to encourage LPAs to embed and coordinate BNG across administrative boundaries through their LDP policies.

37. How could the proposed net gain process be improved for developers?

The best processes for developers are those that provide clarity and certainty. This will include a system where costs and obligations are clearly understood and can be calculated and defined as early as possible. Developers also need to have confidence in the LPA and its capacity to make decisions in a reasonable timescale, therefore LPAs must be adequately resourced.

Engaging an appropriately competent ecologist as early as possible in the planning process will ensure that developers understand their obligations, including potential costs and timeframes.

In order for ecologists to provide high quality advice (consultant ecologists) and assessments (LA ecologists), there needs to be some appropriate training and up-skilling. CIEEM is already delivering training in this area and has plans to roll out considerably more training in the coming months and years.

38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?

None that we have not already mentioned in answer to previous questions above.

39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?

Not to our knowledge.

40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?

No. However, it is vital that we maintain an evidence-based approach to biodiversity conservation and ensure that important habitats – and the habitats of important species – are not being lost in schemes that, according to the metric, are producing a biodiversity gain.

41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?

Yes. It will however require an independent arbiter, which could potentially be fulfilled by the forthcoming Office for Environmental Protection.

Dispute resolution may depend on how ecological issues that are excluded from the metric are to be brought into the process. For example, the presence of populations of important species on the site of the proposed development and indirect impacts such as disturbance to important species or damage to important habitats off-site will still be important issues for the LPA to consider in the planning determination, but would sit outside of the BNG assessment process.

Depending on how it is envisaged that these matters are addressed, it seems likely that disputes would arise about the nature and significance of these aspects of ecological assessment and how the impact assessment for these and the results of the BNG assessment would be brought together by the LPA in the planning balance.

42. Would an additional arbitration or approval process be necessary? If so, please specify why.

No.

43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?

No. However, the accuracy of the metric itself requires ongoing testing and refinement. This must ensure that the outcomes produced by the metric are monitored and evaluated, both by testing the value that it assigns to existing habitats, assessing the efficacy with which the metric is used by developers, consultants and LPAs, and testing the extent to which its predictions about the value of habitats to be created are realised.

We recommend that evidence of both successful and unsuccessful implementation of BNG is collected and disseminated publicly as case studies to provide an evidence base of lessons learned.

44. Should local authorities be required to provide information about habitat losses and gains?

Yes. Data on habitat gains and losses must be recorded and transparently available.

The BNG assessment should, as part of a planning application, be publicly accessible on a site-by-site/scheme-by-scheme basis. Beyond this, it would be preferable to encourage LPAs, as part of their LDP annual monitoring report, to collate and publicise information about habitat losses and gains through their regulatory and wider functions.

Data that is collected at a local level (Local Environmental Records Centres have a key role to play here) should also be aggregated at the national level to contribute to an overview of habitat losses and gains and the progress that is (hopefully) being made towards biodiversity targets. These national reports could then be collated by a national agency such as Defra, through a mechanism similar to the existing National Indicator sets.

45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?

As noted in our response to Question 16, the use of satellite and aerial mapping (including drones) could simplify mapping and stimulate the development and adoption of suitable open source spatial image recognition and analysis applications. However, there will be some fairly significant limitations to the use of the technology (e.g. ability to assess distinctiveness and condition using remote surveying techniques).

CIEEM members have noted that drone and aerial photography has been already been helpful in determining and confirming suspected habitat degradation on sites prior to seeking planning permission.

Automated/programmed drones could be used to monitor/enforce habitat creation and management (although our understanding is that this will require changes in civil aviation rules).

Drone technology offers significant benefits for ecological baseline data gathering, compared to traditional methods of site data acquisition:

- Cost and time reduction for data acquisition and reduced disruption to normal operations of infrastructure (to then focus on the ground detailed botanical surveys).
- Health and safety benefits by removing the need for placing staff in a position of risk.
- Technology benefits such as objective repeatability (for example, assessing habitat area coverage and condition at different times of the year – spring, summer, autumn, winter) and overcoming constraints for challenging access and difficult to reach areas.

Social media App-based citizen science could play a role in ongoing monitoring and assessment of sites.



Position Statement on Natural England's Great Crested Newt District Licensing Scheme

February 2018

District licensing is an alternative approach to great crested newt (GCN) licensing as part of the development process. It requires district-wide survey of the distribution of GCN and assessment of likely impacts on GCN from planned development over the local plan period.

GCN records and other data are used to map the areas where there are the highest risks to the local conservation status of GCN and where the presence of GCN poses an issue for development. Natural England provides advice to the local planning authority on where development should be avoided or high levels of mitigation would be required to protect important populations of GCN and where there are opportunities for the provision of compensatory habitat.

Compensatory habitat can be provided and managed by a range of landowners, ideally strategically targeted and at a sufficient scale to maintain or improve the conservation status of GCN in the area.

Natural England, assisted with funding from the Department for Housing, Communities and Local Government (DHCLG), is currently promoting the 'rollout' of the district licensing approach to local planning authorities following a pilot project in Woking in 2016-17.

CIEEM's Position

CIEEM welcomes initiatives to streamline the protected species licensing system for the benefit of all stakeholders, provided that such initiatives do not undermine the conservation of the species concerned. We also welcome developing a more strategic approach to mitigation and we agree that off-site compensation in lieu of mitigation can, in some circumstances, deliver better outcomes for biodiversity as well as for developers. With this in mind, we are supportive, in principle, of innovative initiatives from Natural England that are intended to bring about positive change.

Nevertheless, we have some significant concerns regarding the current 'rollout' of the district licensing approach to managing the impacts of development on great crested newts (GCN). In summary these concerns are:

- The absence of a coherent national strategy for maintaining GCN 'favourable conservation status' (FCS) and therefore the difficulties of establishing effective 'district' or local strategies to help achieve this.
- The absence of sufficient data on GCN distribution to enable district licensing to be delivered in a robust and evidence-based manner. Proposed strategies for data collection/modelling are unclear as to how baseline distribution and abundance will be established and how FCS will be measured.
- The lack of sufficient professional ecological expertise within most local planning authorities, creating both knowledge and capacity gaps that could undermine appropriate implementation of, or decision-making regarding, a district licence by the local planning authority. This, in turn, creates uncertainty for developers.

- The multiplicity of approaches to district licensing and the uncertainty over timing/programme of roll out, all of which are, again, sources of uncertainty and risk for developers and risk to the conservation status locally of GCN.
- The suggested levels of developer financial contributions relative to the costs of habitat creation/restoration and ongoing long-term management.
- The absence of a coherent plan as to how compensatory habitat is to be found in a manner that delivers the 'more, bigger, better, joined-up' policy.
- The absence of strategies (and funding) for long-term monitoring and data collection to inform both adaptive management approaches and evidence-based future management advice.
- The potential loss of natural meta-population distribution and connectivity, which could result in large but physically isolated and genetically introgressed GCN populations.

We do not believe that district licensing for GCN should be 'rolled out' further until these concerns have been addressed but we do have some suggestions of interventions that would help.

Suggested Improvements

We would ask Natural England to consider the following actions:

- Implement a well-planned, well-funded and transparent data gathering exercise to build a better picture of GCN distribution nationally and locally.
- Define FCS for GCN so that all stakeholders are clear on the desired outcomes nationally and locally.
- Establish a clear set of principles for all district licensing schemes covering essential criteria such as (for example) the minimum level of ecological survey and assessment required, the need to explore retention of GCN within a development where viable/effective and the thresholds above which some on-site mitigation must be provided.
- Provide guidance to local planning authorities on developing compensatory habitat strategies designed to deliver/maintain GCN FCS locally and nationally.
- Provide guidance of appropriate and proportionate funding tariffs in relation to the costs of creating/restoring and managing compensatory habitat in the long-term.
- Provide a clear indication of likely timescales, particularly in those areas where schemes are being developed.
- Require local planning authorities to demonstrate how they are ensuring that they have access to sufficient ecological expertise in order to operate/support a district licensing approach in a robust way.

Conclusion

CIEEM welcomes the ambition to deliver 'net gain' for GCN and strongly believes that a more strategic approach to mitigation is necessary to achieve this. We are supportive of change and innovation to established ways of working whether these are based on sound scientific evidence and the new approaches are properly resourced.

We believe that the evidence base for successful implementation of district licensing urgently needs strengthening (which in itself requires proper resourcing) and that more clarity/guidance for stakeholders is required if the risks are to be managed effectively and the desired outcomes are to be achieved.

CIEEM would like to offer its help and advice in developing strategic approaches to delivering better outcomes for protected species. However, based on current evidence from the GCN district licensing rollout, we would not be supportive of expanding the district licensing approach to other species.