

# **CONSULTATION**

## Response Document



**Biodiversity Net Gain Regulations and Implementation  
(Department of Environment, Food and Rural Affairs)**

**5 April 2022**

## 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 6,700 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:

- Scottish Environment Link
- Northern Ireland Environment Link
- Wales Environment Link
- Environmental Policy Forum
- IUCN – The World Conservation Union
- Professional Associations Research Network
- Society for the Environment
- United Nations Decade on Biodiversity 2011-2020 Network
- Greener UK
- Irish Forum on Natural Capital (working group member)
- National Biodiversity Forum (Ireland)
- The Environmental Science Association of Ireland

This response was coordinated by our [England Policy Group](#), [Strategic Policy Panel](#) and [Professional Standards Committee](#). We welcome the opportunity to participate in this consultation and we would be happy to provide further information on this topic. Please contact Jason Reeves (CIEEM Head of Policy and Communications) at [JasonReeves@cieem.net](mailto:JasonReeves@cieem.net) with any queries.

## General Comments

The Biodiversity Net Gain (BNG) proposals in this consultation can provide the mechanism to deliver short- and long-term gains for biodiversity. However it is vital that the BNG system is supported and delivered using the right mechanisms, guidance, governance, resources and expertise. CIEEM sees the main barriers to successfully delivering BNG as lack of resources (primarily appropriately skilled biodiversity professionals in the sector and ecological capacity and expertise in local authorities) and lack of enforcement (legislation and capacity to do so).

The implementation of BNG must reinforce the mitigation hierarchy to first steer development away from important sites for habitats and species. BNG must not be a lever to allow development that would not otherwise be permitted.

Furthermore, in order for BNG to be effective, updates to the National Planning Policy Framework (NPPF), including Local Plans, will be required in order to support the successful delivery and effective implementation of BNG, both at local and national scales.

The government has announced a £4 million fund for Local Planning Authorities to deliver BNG; this is welcome but will not go far enough to address the capacity issues that have been identified.

CIEEM has conducted research on BNG and wellbeing<sup>1</sup>, which concluded that whilst LPAs have a policy duty to consider both BNG and wellbeing (and the two are interrelated) there is little or no evidence of LPAs considering BNG proposals in the light of wellbeing. And whilst we recognise that there will be circumstances where offsite is the better option and onsite for others, people need to be exposed to nature in their local area and these should be integrated nature-based solutions that replace grey solutions.

Local Nature Recovery Strategies (LNRs) should help direct the delivery of onsite and offsite BNG to ensure the best outcomes for biodiversity. Defra should set out how BNG plans and planning authorities should connect LNRs to the delivery of BNG.

The consultation recognises conservation covenants will be a tool to ensure long term maintenance of BNG habitats, but fails to outline what the incentives are for landowners to enter their land under BNG schemes into conservation covenants. We support the call for a route to designation to support biodiversity gain sites in perpetuity. Further to this, we are concerned that landowners are wary of entering into BNG schemes, fearing that they will lose inheritance tax relief if the land is no longer classified as agricultural. Government needs to ensure that Environmental Land Management Schemes (ELMS) are not significantly more attractive, for example by guaranteeing more money over a shorter time period, such that farmers and landowners consistently opt for options other than those intended for biodiversity uplift. Farmers and landowners need clarity on how different payment options – such as BNG and ELMS – can work in parallel (see our comments on stacking and bundling in Q44-47).

The process diagrams (pgs 14 and 40 of the consultation document) must include reference to wider planning requirements to make it clear that BNG must not be done in isolation and developers still need to consider other biodiversity policies. On the NSIP diagram there needs to be something at pre-examination about engaging and consulting with stakeholders and communities in the development of the net gain plan. Simply being presented with a finalised plan at Examination is not helpful; encouraging a consultative approach is important.

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<sup>1</sup> <https://cieem.net/i-am/current-projects/biodiversity-net-gain-and-peoples-wellbeing/>

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

### Exemptions

#### Question 1

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

**a) for area-based habitat:**

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

No.

The *de minimis* threshold, the sum of all habitat types within a development site, should be as small as possible. We are concerned that even with limitations on small sites, that an accumulation of small sites will have a higher impact on the ecology of a local area (e.g. local authority area) with a combined impact of several small developments.

We are concerned with the inclusion of medium distinctiveness habitats, which by definition have value for biodiversity. We would suggest that consideration is given to the rarity of the habitat in how appropriate the value is. Consideration also needs to be given to 'site fabric'; low distinctiveness habitat within a higher value site that buffers more valuable habitat and increases a site's resilience.

We also suggest that permitted development, which 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.

We also suggest that sites with no initial biodiversity value should not be exempt. There should be a requirement that all sites have to deliver some biodiversity value. This is particularly important for urban sites. Developers could be encouraged to apply dual metrics in these instances. Local planning policies that have both BNG and Urban Greening Factor/Building with Nature policies working together can be powerful way of delivering green infrastructure and BNG on highly urban sites with very low initial biodiversity value.

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

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

No.

The *de minimis* value for linear habitats should also be as small as possible. Connectivity is a key issue in light of climate change and development fragmenting habitats. The Hedgerow Regulations (1997) sets an existing precedent.

#### Question 2

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

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

Other.

We understand the argument for exempting individual householder applications, on the assumption that householder applications may also be covered by other exemptions, such as the minimum size threshold exemption.

There must however be clarification on what is meant by a householder application. There must be a limit to the size of build that is exempt, as a single householder could build several houses in a relatively large development. Additionally, there is a possibility that the build could impact on medium or high distinctiveness habitat.

Other incentives and guidance need to be provided to ensure that gardens – and their biodiversity benefits – are not cumulatively lost to development or the current trend to replace an entire garden with paving or artificial lawn. This is a particular concern if the developer includes private gardens in the biodiversity unit calculation, as these are difficult to monitor and enforce over time.

### **Question 3**

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

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

No.

Change of use applications should not be universally exempt from BNG – some change of use applications cover huge areas of land (e.g. agricultural to *sui generis* use class to enable public access). There is a risk in change of use applications that there will be impacts on existing habitats, for example increasing footfall from changing to recreational uses, or changes in grazing type and pressure.

In addition, permitted development can have negative environmental impacts and should not be exempt from mandatory BNG, for example, agriculture to residential conversion and in the conversion of office space to residential.

### **Question 4**

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

**[Yes, only for biodiversity net gain (please explain why) / Yes, also for some other environmental mitigation purposes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]**

No.

Applying mandatory BNG will ensure each project and its impact on biodiversity is evaluated in order to maximise co-benefits of the project for biodiversity and to ensure that biodiversity loss is minimised or compensated through BNG.

At large scales, exempting mandatory BNG from these sites could have an opportunity cost, whereas a 10% gain would ensure the development is within safe margins.

If this exemption is applied, it should not be extended to other environmental impact mitigation purposes, because these types of projects can change habitats or manage them in different ways, with the potential to impact on biodiversity.

#### **Question 5**

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

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

No.

It is not always the case that self-builds are "*often ambitious in sustainability and small scale*". There is an increased tendency for self-builds to be in more rural areas where the likelihood of biodiversity impacts is greater, especially in areas of high biodiversity value. This would also put biodiversity at risk through cumulative impacts of multiple developments and other indirect impacts on adjacent sites and habitat connectivity.

There should not be a blanket exemption which creates a loophole for developers/self-builders who are building multiple buildings. The availability of a small sites metric will help reduce the burden on genuinely small sites.

#### **Question 6**

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

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

Yes.

This is welcome news, and is consistent with the approach of maximising the co-benefits of nature's recovery for people's health and wellbeing. Brownfield sites can be more ecologically important than greenfield sites (e.g. under intensive agriculture). We agree that brownfield sites can be of high environmental value, 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.

We note that Open Mosaic Habitats on Previously Developed Land present some of the most complex BNG challenges – particularly in inner city settings or remediated land. Recreating off-site and enhancing on-site is challenging. The focus on habitat banking at the moment is on large estates and agricultural land holdings delivering traditional habitat types (e.g. grassland, woodland, wetland). We suggest Defra also needs to encourage offsetting providers to also be considering brownfield sites/open habitats.

The biodiversity metric must be fit-for-purpose, and applied and interpreted by a competent ecologist in order to accurately capture the biodiversity of brownfield sites.

#### **Question 7**

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

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

Yes.

We agree that temporary applications should not be exempted from the BNG requirement. Temporary permissions can cause significant negative impacts on biodiversity, in both the short- and long-term.

It is important not just to consider the negative impacts on habitats but also the effect of a loss of habitat for an amount of time. We note that there is no ability to consider 'temporary' loss within the metric; as such we suggest that any temporary loss is considered as a loss, and habitat creation is provided to reflect the impact upon biodiversity and the time it takes to recover.

We suggest that a definition of 'temporary' is provided, which should not be more than one year.

The context in which habitats are being replaced is also important, for example, connectivity or surrounding land uses may have changed.

### Question 8

**Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?**

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

Yes.

In general, these developments are more likely to impact biodiversity and so should be required to deliver BNG. This also provides an opportunity to deliver BNG in strategic locations. These locations are important for nature and the standards for protection of biodiversity in these areas should be maintained.

We also suggest that permitted development, as it has the potential to cause lasting negative 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.

### Question 9

**Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?**

**[Yes, exempt (please explain which development types and why they should be exempt) / Yes, a modified requirement (please explain which development types and why they should face a modified requirement) / No / Other (please tell us more) / Do not know]**

No.

In addition, we would like to raise our concerns regarding a potential large loophole, in that BNG could be circumvented via retrospective planning consents and planning consents granted through the enforcement process or in relation to appeals. BNG needs to be applied to these consents, for example using historic satellite imagery to determine habitat loss/degradation.

## **Development within statutory designated sites for nature conservation**

### **Question 10**

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

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

Yes.

BNG should not excuse otherwise unacceptable developments/impacts on statutory sites, nor the need to abide by existing legislation and the mitigation hierarchy.

Allowing enhancements of statutory sites creates the possibility for two different management strategies within the designated boundary. While the consultation recognises delivering BNG on non-designated features only, management of these features poses a risk of unintended impacts upon designated features. Enhancement of non-designated features of protected sites should only be permitted if it does not adversely affect the designated features or interfere with the achievement of the conservation objectives of the site. This may not be straightforward or easy to determine. There are also practical difficulties in that landowners of a SSSI sign up to manage the whole SSSI, not just designated features – it is all covered under the same legal requirement.

It is important that a derogation/process is in place prior to any BNG plan being implemented on a given statutory site, and that the current BNG template will need to be fit for purpose to include designated sites.

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 (species are often features of designated sites), 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. Sufficient public investment is needed to fulfil statutory obligations, such as improving the condition of statutory protected sites, and meet statutory environmental goals. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites up to favourable conservation status and favourable condition. There should be transparent and separate accounting processes for statutory funding and private funding, to ensure that private finance does not lead to reductions in statutory funding.

## **Irreplaceable habitat**

### **Question 11**

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

**a) The exclusion of such development from the quantitative mandatory biodiversity gain objective?**

**[Yes / No (please explain why not) / Do not know]**

Yes.



We agree with the exclusion of development impacting irreplaceable habitats from mandatory BNG because, in such instances, net gain cannot be achieved and therefore the system is not applicable when they are lost or damaged. However, there also needs to be a way to ensure that the planning system directs development to avoid harm in the first place and then to ensure all potential impacts are properly considered and mitigated (e.g. including indirect and edge effects).

As acknowledged in the Government's consultation document, any mitigation and compensation for damage or impacts on irreplaceable habitat will require a different approach. This approach will need to ensure requirements for compensation of loss of irreplaceable habitats go beyond the requirements for habitat mitigation compensation and gain for 'replaceable' habitats – including ensuring a high level of transparency of impacts, and compensation higher than any required within the biodiversity metric. This is essential to avoid undermining the protection of irreplaceable habitats.

A suitable compensation strategy for impacts to irreplaceable habitats must be significantly above the maximum ratios in the biodiversity metric. Without this key principle, there is a risk that it will be easier (and therefore be an incentive) to damage and compensate for loss of irreplaceable habitats, than other habitats under net gain.

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 of irreplaceable habitats to enable development. There are cases where pre-emptive damaging of development sites have been discovered using past satellite imagery. We recommend that local authorities or central Government use satellite imagery (e.g. Sentinel-2 or past Google Earth imagery) to confirm that a site has not been damaged or cleared.

The definition of irreplaceable habitats is needed as soon as possible to make an informed response to these questions. We suggest the NPPF should be updated with the list of irreplaceable habitats and strengthened to ensure that development that negatively impacts these irreplaceable habitats is refused as part of the outlined changes on irreplaceable habitats this year. This would strengthen the BNG proposals put forward.

The revised metric needs to consider how irreplaceable habitat compensation is to be addressed.

Another important aspect of ensuring our irreplaceable habitats are protected is surveying for and identifying these habitats by a suitably competent ecologist. For example, the Ancient Tree Inventory and Open Mosaic Habitat 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.

Furthermore, we have concerns regarding the use of tools such as Natural England's Provisional Ancient Woodland Inventory (PAWI) not becoming the definitive position as to what is and is not ancient woodland. CIEEM members have reported areas where the PAWI (and other registers, e.g. Ancient Woodland Inventory and Priority Habitats Inventory) is completely incorrect (i.e. the woodlands that were listed were not in fact ancient, but conversely the woodlands that were not listed were ancient). Had the PAWI been followed, the ecological outcome would have been disastrous. Use of these inventories needs to be verified, on the ground, by an independent and competent ecologist.

The above response applies to terrestrial irreplaceable habitat only. In the intertidal and marine environment, opportunities to improve irreplaceable habitats in these environments that are more

likely to be affected by development, including from strategic approaches, would be missed if net gain opportunities were excluded. Irreplaceable habitats in the intertidal and marine environments need to be considered separately, in line with the work being undertaken by Natural England.

**b) The inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency?**

**[Yes / No (please explain why not) / Do not know]**

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 BNG 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.

**c) Where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat?**

**[Yes / No (please explain why not) / Do not know]**

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 (if updated to do so) as an incentive to improving the habitat.

The absence of negative impacts on irreplaceable habitats should first be established through a comprehensive assessment, before any enhancements to the irreplaceable habitat can be counted. Careful consideration needs to be given to how these enhancements are calculated and carried out due to the special nature of irreplaceable habitat. We suggest a separate section of the biodiversity gain plan which shows only the value of enhancements to irreplaceable habitats.

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 irreplaceable habitat 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.

**d) To use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation?**

**[Yes / No (please explain why not) / Do not know]**

Yes.

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. We look forward to ongoing engagement with Defra and Natural England on the definition, list and guidance to ensure it is fit-for-purpose and we strongly recommend the guidance be subject to consultation to ensure that it is robust.

The controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust. We suggest the NPPF should be updated with the list of irreplaceable habitats, rather than just in 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, all irreplaceable habitats will have to be surveyed, identified and recognised to ensure comprehensive coverage.

**e) The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?****[Yes / No (please explain why not) / Do not know]**

Yes.

We agree in principle with the proposal to provide guidance on what constitutes an irreplaceable habitat. We look forward to ongoing engagement with Defra and Natural England on the guidance to ensure it is fit-for-purpose and we strongly recommend the guidance be subject to consultation to ensure it is robust.

The controls in the planning system to avoid harm in the first place to irreplaceable habitat must be robust. We suggest the NPPF should be updated with the list of irreplaceable habitats, rather than just in 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.

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

CIEEM general comments:

We welcome the application of mandatory BNG to Nationally Significant Infrastructure Projects (NSIPs) and look forward to engaging further on a net gain approach for the marine environment. However, the Government should move more quickly to apply mandatory BNG to NSIPs, as these projects are the most environmentally damaging. The Government should go beyond a 10% mandatory minimum net gain and increase the current 30-year maintenance period to ensure the delivery of genuine gains for nature. Many NSIPs already have committed to the principle of net gain or no net loss and should be pushed to go further. While many aspects of the approach for TCPA applications can be applied to terrestrial NSIP projects, the delivery of net gain for large-scale

projects like NSIPs may need to take strategic and partnership<sup>2</sup> approaches in order to deliver the best outcomes for biodiversity. There should also be a different approach to BNG in the intertidal and marine environment and we look forward to engaging with Government further on these topics.

We also note that the proposals do not explicitly recognise some of the more unusual planning tools, such as Local Development Orders.

## **Phased development and development subject to subsequent applications**

### **Question 12**

**Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?**

**[Yes / No (please explain why not) / Do not know]**

Yes.

We support the requirement to outline how the overall development will achieve net gain at the outset and prior to each phase beginning work. Flexibility will be required to accommodate changes over time and in phased developments, with additional BNG information needed to be submitted including a strategy for how it will be delivered and tracked on a phase by phase basis.

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

There is a risk that in phased developments where there is a long period of time between phases, valuable habitats could develop, changing the ecological baseline. The guidance should be clear that the ecological baseline may be required to be re-surveyed and updated during the phases.

An upfront metric calculation must be completed for each phase of the outline development when brought forward at reserved matters, given the potential for changes in the biodiversity value of the undeveloped parts of multi-phase sites. There must also be transparency of when offsetting will occur as this temporal factor can now be applied in Metric 3.0. In later stages there should be effective engagement on the details to ensure the mitigation hierarchy is applied from approving the development site right through to the detailed design. Also, there must be clear guidance about the application of the 30-year time frame, given the development may be phased over a number of years.

We support the process being as front-loaded as possible in terms of BNG delivery. BNG and consideration to species impacts or compensation for the whole scheme should be implemented in advance of any losses, in order to prevent cumulative impacts. If this is not possible, each phase of a scheme must be accompanied by an agreed percentage of BNG.

There must be an accountability mechanism to ensure the original applicant or master planner has the overall responsibility to secure and maintain the proposed net gain to ensure delivery, monitoring and enforcement. Robust secondary legislation will be essential to getting this right.

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<sup>2</sup> For example, projects local to each other, and where feasible, sharing or using the same access roads, compound, cable routes, etc.

**Question 13**

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

**[Yes / No (please suggest alternative approaches) / Do not know]**

No.

Phased development, variation applications and minerals permissions should be required to deliver mandatory BNG.

There must be clear guidance on how developers must set out their approach to delivering BNG at the outset in phased development. This should include identification of what proportion of the total net gain will be delivered in each phase, recognising in some cases there will be phases that are not able to deliver gains.

The consultation document currently does not consider what must happen should a phase fail to deliver a planned proportion of total net gain or there are temporary losses. In this instance, the overall plan should be revisited to demonstrate a credible plan for how the deficit will be delivered in later phases. Consideration must also be given to how this will be fair and clear for all parties – we must avoid net gain requirements being pushed to late stages of developments and potentially passing an undeliverable burden to developers taking over at this stage (and the risk that no one takes on the last phase and BNG is never delivered).

There is a risk that, in phased development where there is a long period of time between phases that valuable habitats could develop, changing the baseline. It also needs to be clear that 'temporary' loss of habitat needs to be included in considerations (e.g. for most NSIPS, construction compounds are considered temporary but may be present for years). Consideration of these, storage facilities, access roads etc. must be included for transparency.

Time limits between phases also need to be taken into account, with temporal lags in BNG delivery clearly highlighted in the application of the Biodiversity Metric.

**Small sites****Question 14**

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

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

Yes.

We welcome the commitment to require 10% net gain from small sites as the size of the site does not necessarily determine the size of the biodiversity impact and there could be a cumulative detrimental impacts on biodiversity if these are not considered, particularly at local and district level.

The approach of using a small sites metric to reduce burdens is valid and useful, however use of the metric still requires the input of a competent ecologist with sufficient expertise and training in both habitat assessment and the BNG guidance and metric as the fundamental skills of accurate habitat survey and condition assessment, rather than guesswork, are still needed.

We welcome the Government's commitments to consulting again on the Small Sites Metric before being in use for mandatory BNG.

**Question 15**

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

**[Yes, a 12-month extension (please explain why) / Yes, a 6-month extension (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]**

No.

BNG must be implemented as soon as possible. The transition period for small sites should not be extended. The Government's impact assessment for mandatory biodiversity net gain shows that 12% of permitted residential units are small sites and for non-residential developments small sites make up 90% of applications. Therefore, collectively small sites have a large impact on biodiversity and any delay would see habitat destroyed without compensation, delaying nature's recovery.

The small sites metric should mean that this is a much simpler system and therefore could be implemented at the same time. 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.

Local authorities will need to be further supported if this adds an additional burden.

**Question 16**

**Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?**

**[Yes (please outline your suggestion and explain how it would help) / No / Do not know]**

Yes.

The above measures will reduce the burden on small sites significantly. There should not be a reduction in the level and quality of net gain delivery requirements and there must be consistent and transparent processes for net gain registration and monitoring.

Clear guidance and training for LPAs, developers and consultants on the use and application of the small sites metric will be useful and important for effective delivery of BNG on small sites. CIEEM is already developing training for LPA ecologists at PAS/ADEPT's request, and we could explore delivering training on the small sites metric. We would be happy to discuss this further.

**Nationally Significant Infrastructure Projects****Question 17**

**Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?**

**[Yes, exemption (please define your proposed exemption) / Yes, percentage reduction (please define your proposed reduction) / Yes, other modified requirement (please define your proposed modified requirement) / No / Do not know]**

No.

We were pleased to see the inclusion of requirement for BNG in NSIPs in the Environment Act. While we welcome the preference for not excluding NSIPs, the statement *“it may be the case that some types of NSIP are unable to deliver a 10% biodiversity net gain but may be able to deliver a lower percentage target. We intend to apply the 10% as a minimum requirement broadly but, if modifications prove to be necessary, we would prefer to apply a different percentage requirement rather than to apply an exemption.”* is concerning.

A minimum requirement of 10% gain must be the minimum for 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 set against the continuing decline in biodiversity, developments should be seeking to go above the minimum requirement wherever possible – and which could arguably be higher for NSIPs.

NSIPs are generally the projects with the biggest impacts but also the biggest budgets, so should be flagship examples of how to go beyond the 10% BNG requirement. The purchase of national/government biodiversity credits rather than investing in local offsite providers/habitat banks should not be the default approach for larger schemes. The temptation for larger more complex schemes to use national credits (particularly to deliver for medium to high distinctiveness habitats) should be discouraged.

We know there is willingness from developers for delivery of biodiversity net gain. East-West Rail have voluntarily committed to delivering 10% net gain. Defra’s own research (published alongside this consultation document) demonstrates that the predicted costs of achieving 10% or 20% BNG outcomes is similar, at just 1% of the capital costs of these schemes.

NSIPs generally being large, complex, long-term projects will also need independent monitoring and enforcement to ensure delivery. It may be that NSIPs will require bespoke habitat and monitoring plans in order to take into account scheme complexity.

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 correctly 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, especially for large-scale projects like NSIPs, may need to be strategic in order to deliver the best outcomes for biodiversity. There is an opportunity for the National Infrastructure Commission, given its strategic role, to improve its approach to biodiversity and help integrate biodiversity needs and other national infrastructure needs.
- c. BNG and compensation will require a different approach in intertidal and marine environments, as most of the intertidal area is covered by SSSIs. These approaches should be reflected in any future template updates for the BNG plan, including the Habitat Management and Monitoring Plans template.

### **Question 18**

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

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

No.

See response to Q17.

#### **Question 19**

**Do you consider that November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?**

**[Yes (please, provide any supporting evidence or justification) / No, it should be later (please provide any supporting evidence or justification) / No, it should be sooner (please provide any supporting evidence or justification) / Do not know]**

No, it should be sooner.

Many species have declined drastically across the UK as evidenced by the State of Nature Report. If the policy is to make a genuine contribution to the objective of recovering nature and reversing the decline of species abundance by 2030 in accordance with the legally binding target within the Environment Act 2021, then BNG should be applied to NSIPs as soon as possible.

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 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 minimum due to existing policies and international obligations. 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). For example, Paragraph 2, Sub Paragraphs 1 and 2 under the Biodiversity Gain Schedule 2a of Schedule 15, make clear that the minimum requirement for BNG should be 10% unless amended by the Secretary of State (sub-paragraph 3).

#### **Question 20**

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

**[Yes (please explain why) / No (please explain why not) / Do not know]**

No.

The Government's proposed approach would effectively exempt a significant proportion of new projects that are already in the pipeline, which are likely to have significant environmental impacts. Coupled with a 2025 start date, this would mean that BNG would only apply to projects reaching examination in 2027-2028. Many NSIPs are already committed to delivering no net loss and many are already preparing to deliver biodiversity net gain. Given the urgency of the nature and climate crises, we urge the Government to consider options for speeding the transition arrangements for the application of mandatory BNG to NSIPs.



**Question 21**

**Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?**

**[Yes (please explain why) / No (please explain why not) / Do not know]**

No.

Delivery of net gain, especially for large-scale projects like NSIPs, should be strategic to deliver the best outcomes for biodiversity. The best approach and locations for the delivery of gains do not necessarily align with existing landholdings, but should consider the location of net gain delivery relative to other sites (i.e. form a strategic network) and be mindful of the principle that compensation should be as close to the area lost as possible and contribute to local nature recovery networks/other strategies where they exist. It should not simply be pushed to areas where land is cheaper or delivery is easier.

There must be robust and transparent monitoring and reporting guidelines to ensure that genuine gains are delivered. Listing both onsite and offsite BNG sites on the central BNG site register should be required to support monitoring of the overall success of BNG and strategic planning of offsite delivery.

**Question 22**

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

**[Yes / No (please explain why not) / Do not know]**

Yes.

CIEEM supports the broad 'biodiversity gain plan' approach in relation to NSIPs.

**Question 23**

**Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?**

**[Yes (please explain why) / No (please explain why not) / Do not know]**

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.

**Question 24**

**Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?**

**[Yes (please state what information) / No / Do not know]**

Yes.

Currently, the template form does not require information about following the mitigation hierarchy, the presence of irreplaceable habitats and statutory sites and protected species with the biodiversity net gain information at the pre-application stage. 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. More clarity is needed about the steps that have been taken to first prove avoidance, before moving to minimisation.

There also needs to be a strategic element to the information provided. NSIPs are nationally-important and their BNG plans should demonstrate how they contribute nationally to the benefit of biodiversity.

There should also be 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, there should be a requirement for these data to be in national standards and formats to ensure they are FAIR (findable, accessible, interoperable and reusable). This will improve transparency and scrutiny and contribute to the overall environmental information base.

#### **Question 25**

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

**[Yes / Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated / No, it should be longer / No, it should be shorter / Do not know]**

Yes.

But it is a minimum. The duration should be reviewed after practice and biodiversity gain markets are evaluated in order to be increased only, as is the case for other biodiversity net gain developments. 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.

The maintenance period for biodiversity gains allocated to NSIPs should potentially be longer than 30 years. Given the length of these projects and the longevity of most infrastructure, the biodiversity net gains should be secured for longer than the currently proposed period of 30 years.

There are several mechanisms that could help secure biodiversity net gain for longer than 30 years, including funding for habitat creation, restoration and ongoing management, conservation covenants, the proposed 'Wildbelt' designation.

#### **Question 26**

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

**[Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / Do not know]**

No.

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. Additionally, by the time NSIP BNG is introduced, the biodiversity credits market should be better established.

It should also be recognised that if an area of land has to be compulsory purchased for other reasons (e.g. drainage) then BNG provision on that land should be encouraged.

### **Question 27**

**Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?**

**[Yes (please explain what is needed) / No / Do not know]**

Yes.

The development and implementation of marine BNG could be significantly different to the BNG approach developed on land. We welcome Defra's proposal to consult further on marine biodiversity net gain.

BNG will also require a different approach in intertidal areas. Once marine BNG has been developed, guidance will be required to decide whether applicants should use terrestrial or marine BNG when considering regimes that cover the intertidal areas.

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

### **Biodiversity gain plan**

#### **Question 28**

**a) Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan?**

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

No.

It is essential that the BNG information at the pre-application stage includes information on how the mitigation hierarchy has been adhered to and wider biodiversity obligations (e.g. statutory sites, irreplaceable habitats, and Local Wildlife Sites).

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, mitigated 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. Information on how alternative locations and separate designs have been considered to avoid harm should be included (there may be overlaps with any required EIAs).

We have provided some suggested areas for improvement below:

- Including qualitative as well as pure BNG quantitative data – as recent planning inspectorate decisions are setting precedents. Need to link the pure BNG calculations back to the wider findings of PEA/EcIA etc. There could be a report template to link to species requirements, connectivity and anthropogenic disturbance (lighting, noise etc.).
- High level impact assessment – with regards to the effect of habitat creation on any habitat not covered by existing impact assessments (likely to be off-site) to make sure that there are not unforeseen consequences which damage existing habitats directly or indirectly.
- Targets for habitats – this could also wrap up condition and distinctiveness.
- Brief Description on Management Approach section or Prescription.
- Off-Site – minimum 30 year management period in place.
- Off-site habitats – include details of any survey constraints that could affect the baseline survey.
- Off-site habitat creation – include target date for given condition/distinctiveness.
- Protected Species – add in ‘EPSML, Low Impact or District Licencing Scheme or other scheme under licence’.
- On-Site Habitats – include an example here, such as, Phase 1 Habitat categories, UKHAB or distinctiveness and condition criteria.

**b) Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?**

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

No.

It is essential that the biodiversity net gain information includes information on the mitigation hierarchy and wider biodiversity obligations (e.g. statutory sites, protected species 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 should 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. These sections are also particularly important for many stakeholders and the local community, who require access to the information in these sections in order to scrutinise applications properly during the consultation phase.

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.

**Question 29**

**We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?**

**[Yes / No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) / Other (please tell us more) / Do not know]**

Other.

The form should include detail on the aims of the net gain plan to ensure detailed consideration of what they are filling out and why, and avoid it becoming a tick-box exercise. As already mentioned, the form should also include an opportunity to explain mitigation measures and measures to avoid impacts on irreplaceable habitats etc.

Ecological survey data should be reported back to local records centres, which does not currently always happen.

**Question 30**

**Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?**

**[Yes (please state what in particular would help most) / No / Do not know]**

Yes.

It is important that there is confidence in the decision-making system and accurate records are collected. CIEEM currently provides BNG-related training covering BNG design, use of the metric, UKHab and habitat condition assessment. We will also be providing training on developing management and monitoring plans once Natural England guidance/templates are available. We have been approached by Defra/PAS to develop training in BNG for local authority ecologists.

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. 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.

Planners and ecologists need training in BNG, plus high-level training for developers and decision-makers.

Delivery of off-site gains should be strategic and ecologically coherent. It should be as local to the site as possible. It should be joined up with the Local Nature Recovery Strategies, Environmental Land Management Schemes, etc., but more detail on how this will work is needed. There is a risk that off-site provision is delivered by large private estates/land holders/investment banks and results in it being delivered where the land is 'owned' rather than where the BNG is needed.

**Question 31**

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

We would strongly support longer time periods being required, particularly as other sites such as Suitable Alternative Natural Greenspaces (SANGs) have a requirement to be managed in perpetuity.

It is likely that BNG sites will be handed over to conservation bodies and Local Authorities to manage in the long term, which would likely result in them being managed in perpetuity. But to avoid loss of these habitats after the 30 years will require funding, and there should not be a cost on the charity sector (as most conservation bodies are) to deliver/maintain development offsets. Further information is required on the capacity to draw from other funding as needed, for example in relation to 'stacking' and 'bundling'. This should be considered well in advance so that BNG sites are not lost after 30 years.

To encourage developers and landowners to secure sites for a longer period (or in perpetuity) where possible, policy and guidance, including on conservation covenants and additional mechanisms to secure long-term funding, will all be important. We also support the proposal for a new planning designation to protect land for nature's recovery, such as 'Wildbelt' designation, to give Local Nature Recovery Strategies weight in the planning system. Engagement with landowners, including through Local Nature Recovery Strategies conservation covenants will be important.

We suggest Defra monitor and evaluate the barriers for those landowners entering into longer-term agreements with a view to considering how these barriers could be reduced or removed.

## **The market for biodiversity units**

### **Question 32**

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

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

Yes.

As long as competent ecologists are assessing the units provided and they can be verified as having the rights to enter into BNG agreements. There must also be security of delivery, for example, assessing the risk of bankruptcy.

Many landowners will not have experience of habitat creation and management, so evidence should be required that the right competence, expertise and advice is in place to create and restore habitats, to secure long-term management and to properly conduct monitoring and reporting.

The right enforcement measures must also be in place.

In addition, tenants selling biodiversity units need to be able to guarantee delivery of commitments across the full 30-year period, with the landlord willing to deliver in the event the tenancy ends.

### **Question 33**

**Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?**

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

No.

We can see how allowing developers to sell credits could encourage them to go over the threshold, but it limits the overall success of biodiversity net gain to the 10%, which should be the minimum delivered. By incentivising the selling-off of any 'excess' biodiversity gain, this proposal would result

in a ceiling of 10% net gain. This would also undermine LPAs that are trying to pursue policies that set the minimum as higher than 10%.

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 current lack of strong governance, monitoring and enforcement for the delivery of onsite net gain.

#### **Question 34**

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

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

Other.

Some form of centralised trading platform is important in 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.

#### **Habitat banking**

##### **Question 35**

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

**[Yes / No (please specify what else could be done and why it is needed) / Do not know]**

No.

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.

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 will need to be monitoring methods in place to ensure the quality of the units being sold is representative of the individual land parcel. There should also be mechanisms and sufficient resources for enforcement and penalties applied if the promised gains are not delivered.

##### **Question 36**

**Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?**

**[Yes / Yes, but not this specific date (please suggest an alternative date and explain your choice) / No (please explain why not) / Do not know]**

Yes.

There must be a date in place to ensure that net gain has been achieved and to limit pre-BNG requirement site clearance. There are unfortunately still cases of pre-development site degradation/clearance occurring so further deterrence is needed.

Evidence is needed for the pre-existing value of the site, and that there have been no other payments/legal requirements for those actions. LPAs should undertake baseline surveys when sites are included in local plan allocations. This does however need to be resourced.

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.

### **Question 37**

**Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?**

**[Yes (please specify what this limit should be) / No / Do not know]**

No.

This may penalise landowners taking the initiative to create habitats if timed out by developers not purchasing. If a landowner has created habitat but has not yet sold there is potential for the condition and value to increase over time, provided there is suitable management. Habitats should be permitted provided they meet other requirements (e.g. after specified date, no adverse impacts etc.) and as long as a verified uplift has been achieved to deliver units.

The units would need to be verified at the time of sale to ensure they have been delivered, so there would also need to be a requirement for management during the time from creation to sale.

### **The biodiversity gain site register**

#### **Question 38**

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

**[Yes / No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) / Do not know]**

Yes.

For BNG to be transparent and monitored effectively, onsite gains must also be included on the register and subject to the same verification and monitoring as offsite gains.

#### **Question 39**

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

**[Yes / No (please explain why not) / Do not know]**

Other.

The critical time is for the LPA to be assured that the credits have been secured when the planning application is determined. There is a possibility of holding up development if they are not able to



confirm this but it is essential that BNG plans are in place prior to permission being given. There must be adequate time for the register operator to sense-check and perform on-site validation of the application.

#### **Question 40**

**Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?**

**[Yes / No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this) / Other (please tell us more) / Do not know]**

No.

In addition to the information requirements listed in the consultation document, we believe stronger evidence about the baseline condition of the habitat is necessary. The information should also include a map or diagram of the biodiversity net gain site showing the habitat types and their location. There should be a requirement to consult a robust existing evidence base to inform this information. This will allow for monitoring and scrutiny by third parties, including researchers, and local communities to ensure the correct application of the mitigation hierarchy, the principle of additionality, and the genuine delivery and maintenance of habitat creation or enhancement through BNG.

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. There are 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 satellite imagery (and where possible ground truthing<sup>3</sup>) to confirm that the site has not been damaged or cleared.

#### **Question 41**

**Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?**

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

Yes.

Providing a habitat management and monitoring plan (HMMP) on the register is important for transparency, as well as to monitor progress and ensure delivery of BNG in the long term. The HMMP needs to be linked to clear standardised planning conditions to provide the legislative mechanisms to ensure delivery.

The HMMP must be clear on the structure of the document and its contents from the outset, and ensure the following are included:

- An overview of the roles and responsibilities, including management period and principal contractor.
- Specification details for that given habitat – e.g. wildflower mixes, and should include not just the management but maintenance of the habitat in the long and short term.

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<sup>3</sup> For example to avoid thinning of woodland which would reduce condition but not necessarily obvious from aerial imagery.

- Contractor Competencies – ensure that those carrying out the habitat management are qualified to do so.
- Cost – to ensure the given project can afford the required management and monitoring for the 30-year minimum period.

The plan must allow for consideration of remedial action if those responsible have not achieved the delivery or management requirement, particularly in phased developments as mentioned in our response to Q13.

#### **Question 42**

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

**a) set a fee for registration in line with the principle of cost recovery?**

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

Yes.

**b) impose financial penalties for provision of false or misleading information?**

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

Yes.

When information demonstrates that the BNG conditions are not met (or where false or misleading information aims to obscure that BNG conditions have not been met), planning permissions should be revoked and there must be an enforcement process or mechanism in place.

There may be attempts to exploit the system which need to be deterred.

#### **Question 43**

**Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?**

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

Other.

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

As a last resort an appeal process may be helpful, but more information and detail about how this would work is needed. An appeal process will need transparency and consistency. It will need to involve the appropriate planning and ecological experts, and there may be a role for external stakeholders. The process should not be able to lead to multiple appeals for the same piece of land.

The Agricultural EIA appeal process could be a good model. Natural England would be ideally placed to undertake this.

#### **Additionality**

**Question 44**

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

**a) measures delivered within development sites?**

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

Other.

Onsite measures that should be happening anyway under statutory obligation or as part of good design and therefore will not be additional, should not be counted towards mandatory BNG.

The purpose of BNG is to deliver gains for biodiversity, and only those onsite measures whose primary objective is nature conservation, if additional, should be able to be counted towards mandatory BNG.

We do however recognise that multifunctionality should be encouraged, particularly in light of maintaining biodiversity close to people to enable them to engage with nature. Nature-based solutions need to be recognised as best practice; they provide a huge potential for retrofitting our cities to support permeability, adaptability and human health.

All onsite delivery should be recorded on the register and should be subject to the same scrutiny, transparency and enforcement processes as offsite gains. We are currently concerned about the lack of monitoring, reporting and enforcement to ensure the delivery of onsite net gain. This proposal risks creating more, lower quality and unenforceable BNG by incentivising developers to deliver BNG onsite.

Furthermore, we are concerned by the continued absence of clear definition for 'additionality', but also for concepts such as 'stacking' and 'double counting'. Our understanding is that the original concept of 'additionality' was supposed to stop project proponents from 'claiming' BNG that would happen anyway (i.e. in the absence of the project) – for example a new woodland for which a carbon sequestration grant is already in place. Our view is that there is currently considerable confusion around these terms – 'additionality' should stop a project claiming benefits from environmental changes that would happen without that project, but not things that the project itself is delivering (otherwise it is in fact working to frustrate biodiversity delivery). The related terms of 'stacking' and 'double counting' could provide further clarity – i.e. the former being allowed (in certain circumstances, see our response to Q47) because each benefit is complementary, the latter not being allowed.

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

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

No.

We do not support allowing up to 10% of the net gain to be delivered by protected species mitigation. These measures would occur under protected species licensing and so do not constitute additional gains.

**c) on-site impacts on protected sites, and any associated mitigation and compensation?**

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

No.

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, we agree with the Government's proposal that the impact should be measured using the biodiversity metric in order to be calculated.

However, as measures taken to mitigate or compensate for damage to protected sites are statutory obligations, they should not contribute to the achievement of BNG. Measures taken to mitigate or compensate for damage to protected sites and species need to be bespoke and should reflect the uniqueness of protected sites and species compared to other habitats and wildlife. To include them within Biodiversity Net Gain would not only reduce additionality with respect to protection for biodiversity, it would suggest that effects on these sites and species are acceptable because of work to achieve biodiversity net gain. This would send a message that these sites and species can be damaged as long as net gain is achieved, effectively reducing their protection.

#### **d) achievement of River Basin Management Plan Objectives?**

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

Other.

River Basin Management Plan Objectives are a statutory requirement put into place to protect and enhance nature and so should be properly funded. They should not rely on ad hoc private finance, including BNG, to deliver the RBMP objectives.

We do however recognise that we need to drive nature-based solutions, ensuring that they are attractive and feasible, for example through benefit stacking.

#### **e) the strengthened NERC Act duty on public authorities?**

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

Other.

On the one hand, not including this could disincentivise LPAs from providing biodiversity units, but on the other hand there is also a risk that, over time, resource-depleted public bodies will increasingly become dependent on funds generated through the sale of biodiversity units, and deprioritise the use of their own statutory funds to address biodiversity issues or obligations. This would result in decreasing the overall (public and private) investment directed towards nature recovery.

#### **Question 45**

**Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?**

**[Yes, both A and B should be eligible / No, only A (non-designated features or areas of statutory protected sites) should be eligible / No, only B (local wildlife sites and local nature reserves) should be eligible / No, neither should be eligible / Other (please tell us more) / Do not know]**

Other.

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. Sufficient public investment is needed to fulfil statutory obligations, such as improving the condition of statutory protected sites, and meet statutory environmental goals. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites up to favourable conservation status and favourable condition. 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.

We agree with the Government's proposals that non-designated features of statutory protected sites should be eligible for enhancement through biodiversity net gain where it is clear that this is additional to, and not a replacement for, public funding to protect designated features and where this enhancement will not interfere or have a negative impact on the designated features or the existing management plan. There should be clear guidelines to ensure additionality and to ensure any enhancements to non-designated features undertaken through BNG are consistent with existing site management plans to protect designated features.

For Local Nature Reserves, BNG should not be used to fund ongoing restoration or management for these sites. However, it could be used to fund work that delivers enhancements within site that are beyond the scope of the existing prescriptions of the LNR. BNG could also 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 sites 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.

#### **Question 46**

**Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?**

**[Yes / Yes, in some circumstances (please specify which circumstances) / Yes, but within a different range of the high water mark (please specify) / No (please explain why not) / Other (please tell us more) / Do not know]**

Other.

The biodiversity net gain requirement is and should be additional to any existing legal or policy requirements for statutory protected sites and their features. Biodiversity net gain should not

replace proper public funding for protecting, maintaining and improving statutory sites. We cannot and should not rely on private finance through mechanisms such as BNG to bring our statutory sites up to favourable conservation status and favourable condition. There should be transparent and separate accounting processes for statutory funding and private funding for statutory sites, 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.

However, in the intertidal area, a large proportion is designated. This means that most development in this zone will impact on statutory sites and there are fewer opportunities to deliver net gain outside these areas. As well, even if there is a requirement to develop and implement a management plan and intertidal designated sites can be in unfavourable condition or declining condition due to a range of offsite impacts that the landowner has no control over. Thus in the intertidal zone, non-designated and designated features of protected sites should be eligible for enhancement through biodiversity net gain where it is clear that this is additional to, and not a replacement for, public funding. Any enhancement undertaken for biodiversity net gain should be consistent with existing site management plans to protect designated features.

The marine environment may also require a different approach, but we strongly recommend that this approach should be further consulted on.

#### **Question 47**

**Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?**

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

No.

We are concerned about the risks of achieving true additionality through stacking and therefore do not agree with the approach set out in the consultation document to combining payments for biodiversity units with other payments for environmental services from the same parcel of land.

Combining environmental payments on one piece of land allows multiple streams of revenue on one parcel of land in order 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.

Environmental credits which are not additional (e.g. those that would have occurred anyway under BNG) can be actively damaging if they are registered as 'offsets' by a polluter, even though the damage they have done has not been compensated for. 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, and it is also implicitly bundled, as the BNG metric accounts for the habitat impact of the project which is a proxy for the wider environmental harm of the development (potentially including species loss, water pollution). So it is not appropriate to stack BNG with other offset or compensatory environmental service payments, such as carbon offset credits.

However, with the right advice, transparency and accounting, if demonstrated to provide genuine additionality, stacking could take place where only one payment represents an offset (to avoid the hidden harm problem) and the other provides verifiable additional public benefit. Our position is

that, in principle, BNG could be stacked with other environmental service payments for habitat restoration, nature-based removals, and other management measures that are not being used to compensate for damage elsewhere, such as Environmental Land Management scheme payments and non-offset carbon credits.

While we believe that stacking of BNG with other non-compensatory environmental service payments is acceptable, there are several concerns with the practicalities of stacking. The evidence shows that, in reality, stacking environmental payments is very challenging to demonstrate and rarely leads to additional benefits. The risk of stacking is that the same land could be paid for environmental credits but delivers no or very small additional environmental improvements. For example, it should not be possible to stack biodiversity uplift credits on top of biodiversity net gain. At worst, other environmental services could be in conflict with biodiversity outcomes. For example, woodland carbon code funding should not be stacked on top of peatland code funding

Clear and robust guidance will be needed on baselines, what constitutes additional outcomes between BNG, ELM, and other non-compensatory environmental service payments that could be stacked, and monitoring and how to demonstrate additionality. Many environmental service payments already have robust approaches to additionality that should not be undermined by the BNG approach. For example, habitat creation or restoration required via planning permission is not eligible to be sold as a carbon unit certified by the Woodland Carbon Code as it is rightly considered not to be additional.

Bundling, an alternative arrangement to stacking where a single buyer purchases the full suite of biodiversity units and ecosystem service credits generated by a site as a single 'bundle', should be considered by the Government as an approach that could help ensure additionality and may be simpler for monitoring and enforcement.

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 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. CIEEM is keen to input into the review of stacking.

## **Statutory biodiversity credits**

### **Question 48**

**Are these proposals for statutory biodiversity credits sufficient to:**

**a) Ensure, when supported by suitable guidance, that they are only used by developers as a last resort?**

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

No.

Statutory credits should not be the easiest or cheapest option, they should be priced significantly above market value in order to ensure they are a last resort for developers. If it is too easy to access credits, it risks undermining the effectiveness of the BNG policy as a whole, and we risk ending up with localised areas of biodiversity deficit

In areas of high land value, having statutory credits too easily available runs the risk of leading to all developments opting for statutory credits and creating whole areas diminished for wildlife.

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.

Developers should have to set out what efforts they have made to deliver net gain in other ways and why it has not been possible. LPAs would need to verify this.

**b) Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?**

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

Other.

Statutory credits should not be the easiest or cheapest option, they should be priced significantly above market value to ensure they are a 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.

**Question 49**

**Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?**

**[Yes (please explain the alternatives and your reasoning) / No (please explain why not)/ Other (please tell us more) / Do not know]**

No response.

**Question 50**

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

**[Yes / No (if not, what further considerations should be included?) / Other (please tell us more) / Do not know]**

No.

It is essential for the effectiveness of the BNG policy to ensure that the price of statutory credits is very unattractive to developers so that there is a strong incentive to look at local options and delivery of net gain first.

We disagree with the consultation document's principle for statutory credits to be 'cost-effective for developers' – this should not be a priority for the credit price review.



**Question 51**

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

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

Other.

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.

Credit investment should be mapped to a strategic plan, taking into account the Nature Recovery Network and wider government nature restoration policies.

Fundamentally, investment must go towards BNG and biodiversity units, but should also seek to maximize co-benefits, such as tackling flooding through nature-based solutions, delivering carbon storage, improving water quality through the creation of habitats which manage pollutants naturally, and improving human health and wellbeing through the creation of natural blue and green spaces.

However, these criteria must be strengthened and added to in order to support a robust and effective BNG system. Credits should go above the minimum standards, for example, being secured for longer than just 30 years.

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. We suggest that Defra outline how projects will be identified for investment and criteria to demonstrate how additionality will be ensured.

**Reporting, evaluation, and monitoring****Question 52**

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

**[Yes / No, not sufficient / No, overly burdensome or not achievable / No (please explain why not and suggest how could they be improved) / Do not know]**

No.

Local authorities will need significant resources for recruitment, training and enforcement in order to implement BNG. The system must have a built-in right for communities or stakeholders to request a call-in by Natural England and Natural England must be resourced to carry out annual audits and spot checks. The £4 million being provided by Defra for LPAs simply will not go far enough and will not support the additional demands.

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. Monitoring requirements must be clear, transparent, ongoing and demonstrate a genuine cumulative net biodiversity gain over the full 30-year period against a genuine baseline.

Currently, onsite gains have no monitoring or reporting requirements. Onsite and offsite gains should be monitored to the same standard.

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 LPA to monitor and report on the delivery of offsite gains. Onsite gains must be added to the register. LPAs should be required, supported by sufficient resources ring-fenced for the delivery of BNG 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 competent ecologists.

Also, any breach of the planning condition of BNG is practically unenforceable by the LPA. Current requirements on LPAs only allow them to consider enforcement action where there is a 'serious harm to local public amenity' – this current requirement is likely not to be applied to enforcement action against a lack of monitoring, reporting or delivery of BNG. The Government should introduce an enforcement mechanism for local planning authorities if promised onsite or offsite gains are not delivered, for example, LPA guidance could make it clear that this includes the delivery and maintenance of BNG.

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, there should be a requirement for these data to be in national standards and formats to ensure they are FAIR (findable, accessible, interoperable and reusable). This will improve transparency and scrutiny and contribute to the overall environmental information base.

### **Question 53**

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

**[Yes (please explain why this would help) / No (please explain why this would not help)/ Do not know]**

Yes.

However, this would need more development.

Self-reporting by a developer or an offsite BNG provider is not sufficient to ensure BNG outcomes. Third party expert monitoring and verification is necessary.

Accreditation could be useful in ensuring the third party body has the expertise and experience to carry out BNG monitoring and reporting, as well as ensuring those undertaking the initial site assessment and BNG design have the necessary competence.

### **Question 54**

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

**[Yes / Yes, but not sufficient / Yes, but not achievable / No (if not, how could they be improved?) / Do not know]**

Other.

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 LPAs 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, particularly as in the recent study by zu Ermgassen *et al.* (2021), which assessed the impacts of early-delivery BNG in England, 95% of BNG was delivered within the development footprint<sup>4</sup>.

As well as monitoring conservation outcomes, a key part of policy monitoring should be around uptake, compliance, and enforcement. We suggest a requirement for LPAs to supply information about how many enforcement actions were taken against projects that fail BNG monitoring and delivery requirements.

In addition, core statutory nature funding should be accounted for separately from funding derived from BNG, in order to ensure transparency and so that core statutory funding is not being displaced by private investment, rendering biodiversity net gains not additional and undermining the whole system and ecological outcomes.

#### Question 55

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

**a) is there any additional data that you think should be included in the Biodiversity Reports?**

**[Yes (please describe the data and explain the reasons for your view) / No / Do not know]**

Yes.

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, there should be a requirement for these data to be in national standards and formats to ensure they are FAIR (findable, accessible, interoperable and reusable). This will improve transparency and scrutiny and contribute to the overall environmental information base. There is a need to specify that this robust evidence base must be consulted to inform all aspects of BNG at project level and policy level.

There are several additional data that should be included in the Biodiversity Reports, including:

- Species data. As species are not in the Biodiversity Metric, it is unclear how the overall impacts of BNG on species and on progress towards the species abundance target will be evaluated.
- Information on how well BNG is joining up with Local Nature Recovery Strategies (LNRSs) and the Nature Recovery Network (NRN). (E.g. what percentage of BNG is being delivered in areas identified by the LNRSs, how BNG is contributing to the delivery of the priorities identified in the LNRS.)

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<sup>4</sup> zu Ermgassen, S. O. S. E., Marsh, S., Ryland, K., Church, E., Marsh, R., Bull, J. W. (2021). Exploring the ecological outcomes of mandatory biodiversity net gain using evidence from early-adopter jurisdictions in England. *Conservation Letters*. 14: e12820. <https://doi.org/10.1111/conl.12820>

- Enforcement information. As outlined in the Link response, we are concerned about the lack of enforcement mechanism for the delivery of both onsite and offsite gains. We suggest a requirement for LPAs to supply information about how many enforcement actions were taken against projects that fail BNG monitoring and delivery requirements.

**b) is there any data included here that should not be required as part of the Biodiversity Reports?**

**[Yes (please describe the data and explain the reasons for your view) / No / Do not know]**

No response.

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