

DEPARTMENT FOR ENVIRONMENT, FOOD AND RURAL AFFAIRS: BIODIVERSITY NET GAIN REGULATIONS AND IMPLEMENTATION

Response from Humanist Climate Action, April
2022



ABOUT HUMANIST CLIMATE ACTION

Humanist Climate Action is a network of Humanists UK members and supporters committed to redefining lifestyles and campaigning for policies that promote low-carbon, ethical, and sustainable living in the light of the degeneration of the Earth's climate and biodiversity. We want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by 100,000 members and supporters and over 115 members of the All-Party Parliamentary Humanist Group

RESPONSE TO CONSULTATION QUESTIONS

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:

No. It is essential that all parties operating within the planning system are aware of the environmental impacts of development and strive to mitigate potential harms. In particular, it is important to include agricultural land and amenity grassland which might only superficially appear to have low biodiversity value.

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

No. Linear habitats can serve an important role in providing ecological connectivity.

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

No. It is essential that all parties operating within the planning system are aware of the environmental impacts of development and strive to mitigate potential harms. Householder applications could involve a fee if net gain uplift is not feasible.

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

No – if the change of use will destroy habitat.

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

Yes.

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

Yes.



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.

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?

No.

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

Yes.

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?

Do not know.

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?

Do not know.

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?

Do not know.

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. It is essential that there should be a strong presumption against any development affecting irreplaceable habitat, whether directly or indirectly, and that Biodiversity Net Gain (BNG) is not used to circumvent that presumption. A clear and comprehensive definition of irreplaceable habitat is therefore needed. In particular, the spatial boundaries of irreplaceable habitat should be understood to include all land needed to sustain the ecology of that habitat, including areas which serve a buffer function or provide connectivity, even if those areas are not in themselves considered to be of 'current high value'. In sum, it should include any land which affords the opportunity to make the irreplaceable habitat more resilient in the future even if it does not currently constitute a high value habitat in itself.

e) The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?

The strong presumption against any development affecting an irreplaceable habitat implies a presumption against any proposal for a bespoke compensation agreement.



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 to NSIPs?

No. There should be no exemptions or reduction of requirements for Nationally Significant Infrastructure Projects (NSIPs).

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?

No, it should be sooner. Bodies with responsibility for NSIPs have had ample time to prepare for the commencement of BNG legislation.

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

Yes. It is of great importance (and should be rigorously applied) that the provision for an earlier habitat value to be applied as the baseline where the value of the habitat has been recently degraded, in order to remove any incentive to clear habitats in advance of ecological assessments.

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)?

No. The site within the development boundary should be assessed as a whole. Making distinctions between different parts of the site would provide too much scope for manipulation of the data.

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?

No. The proposal outlined presumes that developers will deliver on biodiversity promises made in reality. Neither governance nor resources are in place that would ensure that commitments are actually met and the excess units are genuine additionality. The proposal risks creating a market of biodiversity units which are sold and bought but never an actuality.

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?

No. Additional measures should be implemented to ensure that landowners do not pre-emptively damage or intentionally lower the quality of their land to reduce the baseline by which the possible uplift will be judged. For example, local authorities could use past satellite imagery for a site rather than rely on the applicant themselves submitting a statement.

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?

Other. In principle, yes, but there is a danger that Government bodies and local authorities would use BNG offsetting to meet biodiversity targets which they would be legally obliged to deliver in any case. It would be important to require evidence that BNG is being used to provide genuine additionality, i.e. providing extra funding, not replacing funding.



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?

No, not sufficient. There is a fundamental need for resources to be in place to ensure that the potential benefits of BNG are delivered in reality. Local authorities in particular do not at present have the resources or expertise needed to monitor biodiversity outcomes or to take effective enforcement action. It is essential that the system should not have to rely simply on developer self-reporting. Significant additional funding must be provided, either from developers or from central Government, to pay for monitoring and enforcement, including BNG training and the recruitment of specialists. Local authorities also need to be empowered to take effective action, and therefore need to have powers which go beyond the current advice not to take enforcement action against violations of planning conditions unless the violation represents 'a serious harm to a local public amenity'. It is also essential that developers should not be able to choose their own ecological consultants. Consultants should be allocated by a local authority or an impartial body who will charge the developer an appropriate fee, in order to avoid potential conflicts of interest.

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

No. The key aim of this policy overall must be to deliver truly additional conservation gains that would not otherwise have happened. If net gain generates revenue that is spent on nature conservation the Government must not use this as an excuse to reduce core conservation spending or there will be no additionality overall and the ecological outcomes of the policy will be undermined. A suggested solution would be to track spending on conservation separately from spending on conservation that is attributable to funding derived from net gain – the spending should be reported alongside each other so that the Government and environmental NGOs can assess and evaluate the policy.

For more details, information, and evidence, contact Humanist Climate Action:

Lori Marriott

Humanist Climate Action Coordinator

lori.marriott@humanism.org.uk

humanists.uk

