# Monitoring and Biodiversity Net Gain

In February 2018 the Government launched “A Green Future: Our 25 Year Plan to Improve the Environment”. This includes a policy for “Embedding an ‘environmental net gain’ principle for development, including housing and infrastructure” in England.

## Public Consultation

In December 2018 the Government launched a public consultation on the implementation of biodiversity net gain (BNG), which closed in February 2019. The consultation included the following approach:

- The biodiversity of a site both before and after the development is assessed using the DEFRA biodiversity metric.
- A 10% net gain in biodiversity is proposed as a minimum, in order to account for uncertainties and risks and provide for an overall gain.
- A hierarchy of mitigation is applied.
  - Avoid impacts;
  - Minimise impacts;
  - Remediate/restore habitats affected by impacts; and
  - As a last resort, compensate for any residual harm through habitat creation or restoration (termed biodiversity offsetting).

This process is currently proposed for all infrastructure projects. For those projects requiring an EIA it is likely that such assessments will be incorporated into the Biodiversity chapter of the Environmental Statement.

## EIA Legislation

In England the EIA process is predominately undertaken in the context of the town and country planning system. This is governed by the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the England EIA Regulations). There are other regulations applicable to the EIA process in England, but these are not discussed in this article.

Part 5, Regulation 26 (1)d of the England EIA Regulations states:

“if planning permission or subsequent consent is to be granted, consider whether it is appropriate to impose monitoring measures”.

Monitoring is often required as part of a planning permission to establish when a requirement of the planning permission has been completed. The powers within the England EIA Regulations also enables monitoring to be imposed to assess potential significant adverse effects identified within an Environmental Statement. This ability to prescribe monitoring as set out in the England EIA Regulations is considered particularly relevant where a development requires biodiversity offsetting.

## Biodiversity Offsetting

Providing a biodiversity offset in order to allow for the degradation of particular habitat can be contentious due to a lack of certainty that a particular scheme will provide no net loss.
A study in 2012, (Pickett et al.) demonstrated that to achieve no net loss for a habitat offset program can require extensive levels of habitat creation, with intensive monitoring necessary to demonstrate that there is no net loss.

The very nature of biodiversity offsetting through habitat restoration or creation means that there is likely to be a significant period of time before the desired state of the offset area can be achieved. It is understood that the DEFRA biodiversity metric 2.0 is being designed to assess the biodiversity of the planned area so that it can be compared to the area being developed. Any analysis can however only assess the planned offset rather than what is achieved.

This time lapse could lead to a species being lost from an area as one habitat is degraded before an equivalent habitat is created, or due to a lack of connectivity with the new habitat. This is a difficult and complex area that will require long term commitments and monitoring that developers may seek to resist.

**Discussion**

It is possible that any new or amended legislation or guidance associated with the government’s proposals on environmental net gain contained in the public consultation will include a requirement for monitoring. The evidence suggests that such monitoring requirements will be long term in nature in order to demonstrate that there has been a net biodiversity gain.

Local planning authorities (LPAs) should be encouraged to include long term monitoring requirements in planning permissions such that the true biodiversity loss or gain can be demonstrated together with clauses requiring the developer to rectify any loss.

If this is not undertaken the concept of biodiversity net gain could be brought into disrepute. Whether developers seek to appeal any such long-term monitoring requirements is a further issue to keep an eye on.

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**References**