

Biodiversity Offsetting in England – Green Paper November 2013

Response by the Institute of Environmental Management and Assessment (IEMA)

Introduction

1. The Institute of Environmental Management and Assessment (IEMA) is the UK's leading environmental professional membership body, with a growing membership of 15,000 environment and sustainability professionals.
2. IEMA is dedicated to creating a sustainable future through environmental skills, knowledge and thought leadership, working to deliver low carbon, resource efficiency, sustainability and environmental skills into the economy. IEMA's professional qualifications are well regarded by employers across all sectors of the economy, regularly being cited as a requirement for people who are being employed in environmental management, environmental assessment and sustainability roles.
3. Many IEMA members work in development and assessment roles within businesses, as consultants and advisors, or within regulatory, planning or consent related positions. Our members work across all sectors of the economy and are active in providing professional advice into key sectors relevant to this consultation (such as construction and development).
4. IEMA has provided earlier evidence and views on biodiversity offsetting including;
 - a. Response to initial Defra informal consultation – January 2011
 - b. Contribution into 2012 report by the All Party Parliamentary Group on biodiversity www.iema.net/system/files/biooffsets_iema_appg_2iema.docx
 - c. Submission into 2013 report of the Ecosystems Market task Force - www.iema.net/system/files/feedback_to_emtf_second_phase_research-biod_offsets_iema_5.docx
 - d. Written evidence for the Environmental Audit Committee (October 2013) - <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidencePdf/2988>
5. IEMA's response to this consultation has been developed through engagement with our members, and in particular with practitioners active in development and assessment related work where biodiversity offsetting can be an additional tool for compensation and enhancement. Our practitioner engagement included two facilitated workshops (Sheffield and London) and also a webinar with Defra participating. **In total around 250 practitioners participated in sessions and contributed to this consultation response.**

IEMA - Headline Response points to Defra Green Paper on Biodiversity Offsetting

6. Biodiversity offsetting is a formalised approach that can increase compensation levels against the residual damage of new developments and in so doing, contribute to a reversal of incremental and cumulative biodiversity loss. A well-developed scheme should make an important contribution in addressing the longstanding decline and fragmentation of ecological networks (a critical concern outlined in Professor Lawton's review for the Government¹).
7. Biodiversity offsetting is not straightforward and presents a challenge in terms of developing a credible scheme that gives critical confidence to all parties. Demonstrating the value or 'equivalence' of traded units is itself more challenging than carbon offsetting (a practice that suffered a significant lack of confidence in its formative period). A transparent and robust approach will be required and lessons should be learned from professionals who were directly engaged in the early period of commissioning carbon offsets for carbon neutrality.
8. Offsetting should be used firmly within the context of the mitigation hierarchy with safeguards to avoid the practice of a 'jump' to an offset solution. Reliance upon the mitigation hierarchy being followed as standard planning practice should not be assumed and its functional relationship with biodiversity offsetting needs to be addressed within proposals. Promotion of offsetting as an option will alter the dynamics of related decision making and this in turn is leading to some concerns around future levels of protection in practice for local wildlife sites.
9. The location of offset projects is an area of contention, with strong arguments for both local and strategic approaches. Concern also exists over ensuring the supply and availability of offset projects in the early stages of developing a new voluntary market. Some interest exists in the potential for Government to help address initial supply concerns through amendments to existing landscape conservation support.
10. Beyond planning, there is interest in wider potential use of biodiversity offsetting and offset metrics, for example in relation to measuring and reporting within wider sustainability or corporate and social responsibility initiatives. Connections with developments in payments for ecosystem services should also be a consideration within any developing scheme and market.
11. Monitoring and review are important considerations and will need to be built into any scheme. It is important to plan this from an understanding of the generally low levels often seen in practice for site monitoring into the effectiveness of ecological mitigation. Review is also required for the scheme itself and in relation to the use of the offsetting metric.
12. Governance is a significant concern in relation to the approval and location of projects. Concerns are also being identified over the capacity of key parties to implement such a new scheme effectively and with consistent safeguards.

¹Making Space for Nature: A review of England's Wildlife Sites and Ecological Network. Professor Sir John Lawton, September 2010.

Specific response on Green Paper consultation questions - IEMA

Question 1: Do you think the Government should introduce a biodiversity offsetting system in England?

Question 2: Do you think the Government's objectives for the system and the characteristics the Government thinks a system would display are right?

13. If safeguards are introduced and the policy is well integrated and monitored, then yes we would agree with the introduction of a biodiversity offsetting system in England. The answer to this question has to be conditional and concerns raised throughout this response will need to be addressed. Biodiversity offsetting should be carefully developed and integrated within a wider policy approach to address the important challenges set out in Professor Lawton's 2010 report for the Government (Making Space for Nature).
14. IEMA members, environment and sustainability professionals, provided earlier evidence on carbon offsetting which confirmed caution and scepticism in the potential for misuse of offsets outside of any avoidance and reduction based hierarchy². Engagement with IEMA members on the Defra Green Paper confirms that similar practitioner concerns exist in relation to current biodiversity offsetting proposals. We believe the proposals should have careful regard to any potential misuse and that offsetting should be used firmly within the context of the mitigation hierarchy.
15. The three bullet point 'objectives' on page 8 of the consultation are reasonable but we do have concerns over the emphasis and short term focus. If these are to be set within priority order we would place 'achieving net gain' at the top. Only one objective is required relevant to developers (rather than the two set out) and 'avoiding additional costs to businesses' may not be exactly the right objective for the policy. We believe the critical business issue is not just on costs as this can lead to short term and narrow considerations. More relevant is net impact on economic activity in this sector over the medium term.
16. In relation to the characteristics, we would add that the scheme be recognised as well designed to avoid risks of development applications pursuing a 'jump' to an offset solution. In this regard the mitigation hierarchy should be followed (not observed) and the implications and dynamics of this policy development addressed (i.e. it will require supplementary support to address capacity, integration and other concerns outlined).

Question 3: Do you think it is appropriate to base an offsetting system on the pilot metric? If not is there an alternative metric that should be used?

Question 4: If you think the pilot metric is the right basis for an offsetting system: Are there any other factors which should be considered when quantifying biodiversity loss and gain? Are the weights given to the different factors appropriate? Are there any other changes you think should be taken into account?

² GHG Management and Reporting, IEMA, September 2010 - NOTE Appendix 1 and responses to survey questions 28 - 32
www.iema.net/ghgreport

17. Although experience in England is limited, the offset metric has been well received by some practitioners as being 'valuable and complementary' to wider environmental assessment and related decision making. We would agree that it is a suitable basis but we would add that it should not be used in isolation from existing ecological and environmental assessment.
18. As stated, the metric should not be used in isolation from wider assessment:
- The metric is not specifically designed to address species. It could be used to facilitate simplistic compensation, missing wider factors such as the significance and value placed on sites by local communities. Wider factors such as these should be considered within decision making. It will be necessary to build in safeguards.
 - Although 'wider factors' are considered and addressed within the process of Environmental Impact Assessment (and specific EC guidance on biodiversity within EIA has been made available this year) the scheme will itself need to safeguard against use of the metric in isolation. Specific guidance and training would be helpful and possibly an 'offsetting' code of conduct.
 - Some comments have been made around the potential value of using the offsetting metric in earlier stages of assessment and related decision making within the mitigation hierarchy (i.e. not just on its intended use for residual impacts). In some situations this may have value as a supplement to existing good practice. We have concerns this must not displace wider assessment and such quantification needs to be carefully presented within the wider (assessment) context. This further points to potential capacity concerns, a need for guidance and training and to wider integration considerations.

Question 5: Do you think offsetting assessment should be used when preparing a planning application for a project?

Question 6: Do you agree that it should be the responsibility of planning authorities to ensure the mitigation hierarchy is observed and decide what offset is required to compensate for any residual loss? If not, why, and how do you think offsetting should be approached in the planning system?

19. We think the metric should be used, but believe any 'offsetting assessment' should not be used or presented as a separate stand-alone element of environmental assessment or limited just to use of the quantified metric. If it is integrated into a planning application process then it will need to have regard to this wider context (i.e. be integrated and supplemental to environmental impact assessment for developments requiring EIA)
20. Developers, consultants, planning authorities and statutory consultees all have a responsibility towards the use of the mitigation hierarchy with regard to developments. Clearly the planning authority is uniquely positioned in terms of its responsibilities and offsetting should be used firmly within the context of the mitigation hierarchy with safeguards to avoid the practice of a 'jump' to an offset solution. Reliance upon the mitigation hierarchy being followed as standard planning practice should not be assumed. Planning's functional relationship with offsetting needs to be carefully addressed.

21. Concerns exist over the capacity of key parties to implement a new scheme effectively and with consistent safeguards. In particular the important role of Local Authorities and Natural England are identified, with respective concerns around current skills and staff capacity to support and deliver biodiversity offsetting through the mitigation hierarchy (i.e. avoiding any simplistic jump to an offset solution)
22. Practitioner concerns are further being raised that under the National Planning Policy Framework (NPPF) and with regard to current economic imperatives, local planning decisions are already under increased pressure to consent. This decision making climate combined with more accessible biodiversity offsetting is leading to some concerns that planning protection for locally valuable wildlife sites could (in practice) be reduced.

Question 7: Do you think biodiversity offsetting should have a role in all development consent regimes?

23. We believe biodiversity offsetting can make a contribution across other development consent regimes. Safeguards will need to be considered with similar concerns around issues such as additionality, permanence and the appropriate use of the mitigation hierarchy.

Question 8: Do you think developers should be able to choose whether to use offsetting? If so what steps could Government take to encourage developers to use offsetting?

Question 9: If you think developers should be required to use offsetting do you think this requirement should only apply above a threshold based on the size of the development? What level should the threshold be?

Question 10: Do you think there should be constraints on where offsets can be located? If so what constraints do you think should be put in place?

Question 11: Do you have any comments on the analysis set out in the impact assessment?

Question 12: Do you have evidence that would help refine the Government's analysis of the costs and benefits of the options considered in this paper? In particular, evidence relating to:

- The amount of compensation already occurring where there is residual biodiversity loss which cannot be avoided or adequately mitigated
- The method for estimating costs and their magnitude
- The method for estimating benefits and savings and their magnitude
- How to capture the wider social and environmental benefits of maintaining England's stock of biodiversity and delivering a coherent ecological network
- Likely take up of offsetting under a permissive approach

24. With regard to the 4 options on page 13 we believe a regime could be developed as follows:
 - Above an initial threshold (set to exclude 'very small' developments) the offsetting metric should be required to be used. In addition a 'levy based' payment should be made. However in contrast to the (CIL) proposal outlined in the green paper, these collected funds must be ring-fenced for biodiversity.
 - Above a higher threshold the 'uniform' approach should be used, as outlined in the green paper (i.e. requiring use of the offsetting metric and offset to be obtained).

25. We believe thresholds should be investigated and developed to determine appropriate levels. The intention should be to set proportionate requirements and at same time ensure wide coverage achieving a meaningful net gain that can start to compensate for the incremental loss of 'smaller developments' over time (reference 2010 'Lawton report' and Defra's 2011 Natural Environment White Paper)
26. Constraints on offset location will need further consideration.
27. We have provided earlier input to the Ecosystem Market Task Force on some of their cost and benefit assumptions. These included the need for 'scheme confidence' when establishing a voluntary offset market, on assumptions concerning developer costs in the short term and comments concerning the levels of claimed benefits regarding net developable area. We believe this response may be relevant to the analysis in Defra's Impact Assessment and is available here-
www.iema.net/system/files/feedback_to_emtf_second_phase_research-biod_offsets_iema_5.docx
28. It is difficult to deliver a fully representative and evidenced response to Defra on costs and benefits within the period of this consultation.
 - On one of the questions posed, we can state that a majority of practitioners do indicate that biodiversity offsetting will not receive any significant uptake without a mandatory requirement. 87% agreed with this in our post webinar survey. There is a clear professional opinion that biodiversity offsetting will not be significantly progressed without some level of mandatory requirement from the Government.
 - A further post webinar survey question focused on the following statement - "Without further safeguards being added to Defra proposals, biodiversity offsetting could do more harm than good". From 63 responses 33 (52%) agreed, 21 stated neither and 9 (14%) disagreed. Although this question received a more mixed response, with one third not declaring, it is still clear that very few professionals believe that the current Defra proposals have adequate safeguards.

The above short polling exercise is broadly consistent with the mix of views expressed in the two workshops i.e. that a mandatory requirement is needed to drive uptake but only with further safeguards.

IEMA's membership is a well placed cross sector resource that could provide further evidence on costs and benefits. We would be happy to engage members in these issues and further, if Defra would find this valuable.

29. IEMA is not directly responding on question 13 but would be happy to consider associated issues further.

Question 14: Do you agree with the proposed exceptions to the routine use of biodiversity offsetting? If not, why not? If you suggest additional restriction, why are they needed?

Question 15: Which habitats do you think should be considered irreplaceable?

30. IEMA agrees that certain habitats should be treated with greater caution (some irreplaceable) and sites identified by Defra for exceptions to 'routine' offsetting are agreed. However we are somewhat concerned about the wording of this consultation question. Biodiversity offsetting should not be routine on other wildlife sites not listed on page 18. For example local wildlife sites (County Wildlife Sites, LNRs, others) should as appropriate receive protection through the planning system and also through application of the mitigation hierarchy.
31. IEMA has not specifically answered question 15 concerning which habitats should be seen as irreplaceable.
32. IEMA has not specifically answered questions 16 – 20 on species although we have earlier outlined this is an aspect addressed within wider ecological / environmental assessment and that offsetting will need to complement and integrate with this wider assessment.

Question 21: Do you think conservation covenants should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing conservation covenants? If not, how else do you think offsets could be secured for the long-term?

Question 22: Do you think management agreements should be put in place as part of an offsetting system? If they are required, who do you think should be responsible for agreeing management agreements?

Question 23: Do you think an offset register should be put in place as part of an offsetting system? If so, who do you think should be responsible for maintaining an offset register?

Question 24: How long should offsets be secured for?

Question 25: Are there any long-term factors, besides climate change, that should be taken into account when securing offsets?

33. Conservation covenants do offer an option in helping to ensure / secure permanence.
34. Further work is required on management agreements. We envisage these will be required.
35. Early suggestions are for an offset register to be run by either Natural England or RSWT
36. A 30 year (+) timescale is suggested for offset projects (preferably longer)
37. Food security and other national interests may require consideration
38. IEMA has not answered question 26 on backdating

Question 27: Do you think an offsetting system should take a national approach to the question of significant harm and if so how?

39. No, the offsetting system should instead require developers to demonstrate 'net gain'.
40. We believe that assessing significant harm is not the central responsibility of the offset system. Biodiversity offsetting should seek to be robust in assessing residual loss and in estimating and delivering a valuable compensation that is credible and which (along with on-site mitigation) can be objectively regarded as delivering net gain.
41. Demonstrating 'equivalence' as a core principle or basis for offsetting is challenging in relation to biodiversity. Although challenges are faced in carbon offsetting (for example in setting project baselines, verification, etc.) clearly biodiversity is more complex. A further difference is timing with delivery of biodiversity benefit from offset projects arising after their functional use or claim (i.e. following an ex-post as opposed to ex-ante approach).
42. IEMA has not directly responded on question 28.

Question 29: Do you think there should be constraints on what habitat can be provided as an offset? If so what constraints do you think should be put in place, and how should they work in practice?

43. We agree that completely free trading across habitat types would not be appropriate. We do see merit in building in some flexibility. Of the options outlined we believe that the hybrid option appears suitable. We would however propose that 'trading up' be considered as an additional principle, requiring or incentivising offsets that offer higher value habitats

Question 30: Do you agree an offsetting system should apply a strategic approach to generate net ecological gain in line with *Making Space for Nature*? If so, at what level should the strategy be set and who by? How should the system ensure compliance with the strategy?

44. IEMA believes that along with robust and transparent scheme details, a meaningful and stated net gain outcome could help to address many of the public concerns and scepticism that will surround developments in biodiversity offsetting. The 'net gain' statements within the Government's Green Paper are welcome and something IEMA has called for in earlier work³. However, concerns will exist on the fairness of requiring developers to fund a net gain at this time. IEMA believes the net gain objective is important and should be further

³ IEMA submissions to APPG Biodiversity https://www.iema.net/system/files/biooffsets_iema_appg_2iema.docx and to Ecosystems Markets task Force - https://www.iema.net/system/files/feedback_to_emtf_second_phase_research-biod_offsets_iema_5.docx

supported by Government. Given the condition of our ecological networks and the need for action on biodiversity, IEMA believes Government should increase its ambition and build a more integrated policy approach to deliver meaningful, not marginal, net gain.

45. A range of views exist over the most appropriate scale for guiding the deployment of biodiversity offset projects. IEMA believes there is merit in a mixed approach that would support projects at both local and strategic scale. We believe this is an area for further policy consideration in the context of achieving a more ambitious 'net gain' for biodiversity.
46. Concerns exist over the availability of offset projects in the early stages of a new voluntary market. Interest exists in exploring wider policy changes that could support supply. One example is to consider amendments to existing landscape conservation support. Additionality would need to be demonstrated and any double counting concerns resolved. This wider integration and review is of interest in terms of maximising the 'net gain' policy outcome and also in addressing the supply concern at local level.

Question 33: Do you think it is acceptable or not to use biodiversity gain created for other purposes as an offset? If you do, how should it be decided what is allowed to be used as an offset?

47. In principle this could be possible as long as the offset is additional and there is transparency in the process. This will need careful development, with consideration to demonstrate and ensure progress beyond 'business as usual'. Examples and case studies developed within Defra's recent guidance on Payments for Ecosystem Services(PES) will be informative (for example extending principles of so called 'layered' and 'bundled' PES).

Question 34: How do you think the quality of assessments should be assured and who by?
Question 35: How should differences of opinion over assessments be addressed?

48. Many members identify a need for Natural England to be effectively resourced to support such quality assurance and wider governance. We believe professional bodies can also have an effective role. However the primary concern from members is centred on the role of Natural England and related concerns on their capacity.

Question 36: Do you think the metric should take account of hedgerows? If so do you think the current approach is the right one or should it be adjusted?
Question 37: Do you think it should be possible to offset the loss of hedgerows by creating or restoring other habitats

49. At this stage we believe the approach on hedgerows is reasonable. There is however an argument for flexibility so that offsets can better reflect local or regional priorities. We believe this issue requires further consideration and would agree that some flexibility could be built in to any final scheme.

50. Yes but only if the other habitat is a 'trade up' in quality and enables a more valuable strategic outcome. We would expect hedgerow offsets to in most cases be an equivalent (or improved) hedgerow replacement.

Question 38: If conservation covenants are put in place, do you think providing for offsetting through planning guidance will be sufficient to achieve national consistency? If not, what legislative provision may be necessary?

51. No, we do not believe that guidance alongside conservation covenants will be sufficient. Offsetting will directly alter the dynamics of decision making and this needs to be recognised and addressed. Biodiversity offsetting can provide a perceived easy option, with risks of mis-selling and concerns of developers being potentially fast tracked to an offset solution. There should not be a reliance on current practice being sufficient to guard against this (i.e. in relation to the mitigation hierarchy). The development of a biodiversity offsetting requirement will necessitate a renewed focus on the mitigation hierarchy (itself overdue). A code of practice could be valuable alongside registers and minimum standards. More generally, governance is identified by our members as a significant concern both in relation to quality of assessments and also in the sourcing and location of projects. Many practitioners propose an active governance role for Natural England.
52. Monitoring, evidence and review need to be built in to any scheme. It is important to plan and resource this from an understanding of the generally low levels often seen in practice for monitoring ecological mitigation effectiveness. Review is also required to ensure any developing scheme is working effectively to achieve net gain and to further test and refine the offset metric.

Further comments

53. In addition to their contribution within planning and development control, interest exists in wider use of biodiversity offsetting and / or offset metrics. Such additional opportunities for creative application of offsetting and the metric are important to consider within a context of pursuing the wider net gain policy objective.
54. Corporates that are active in managing their own estates and re-establishing important habitats have potential interest in relation to measuring and reporting biodiversity gains (for example reporting within their own sustainability or corporate and social responsibility reports).
55. Some businesses are also expressing interest in the use of biodiversity offsetting within bids for major work (i.e. adding value for clients or within an objective to secure net gain).
56. The potential for gains through modifications and creative use of public procurement are further important considerations identified by our Members.

57. Connections with developments in payments for ecosystem services should be a consideration (for example potential synergy with the Woodland Carbon Code).

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15th October 2013