

IEMA Response to the DEFRA Net Gain consultation

About IEMA

IEMA is the professional body for those working in environment and sustainability.

IEMA's membership of over 14,500 sustainability professionals work at the interface between organisations, the environment and society to create long-term value and minimise risks. They guide and lead the changes that will be required for a sustainable future.

We have previously submitted a consultation response to Government proposals on [biodiversity offsetting](#).

Scope

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

1. Yes. IEMA strongly supports the introduction of a mandatory requirement to achieve biodiversity net gain (BNG) for all housing, commercial and other development within the scope of the Town and Country Planning Act.
2. While we consider that some of the specific proposals may need to be amended or strengthened, there is an overwhelming need to ensure that development leaves the environment in a better place. This is currently not the case across the planning system as a whole and will only happen under a well-planned mandatory scheme.
3. In setting a mandatory requirement for BNG, Government will need to consider the timing and associated communication and claims of achievement (recognizing the reality that BNG can rarely be achieved and delivered within short timeframes). The mandatory requirement for example, may need to be framed as a requirement to plan and deliver BNG. Ownership, governance and responsibility are further critical considerations.

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

4. A range of supporting actions are possible to envisage, from investment and development in professional skills and competencies (e.g. in assessment, planning and development), through to improved monitoring and planning conditions (i.e. ensuring offset projects are funded, protected and achieved).
5. A mandatory requirement in isolation would risk being poorly implemented and is unlikely by itself to achieve the BNG stated outcome. To achieve Biodiversity Net Gain it is imperative that a 'full life' approach is planned, implemented and resourced with all key actors aware of their roles and responsibilities.

Should there be exemptions or simplified assessment processes for house extensions, small sites, brownfield sites or other sites?

6. IEMA agrees that permitted development and house extensions should be exempt. However, IEMA has some concerns over the scope of the permitted development regime. While these concerns are outside the scope of this consultation, they broadly relate to development projects that would otherwise benefit from closer scrutiny due to their likely impacts.
7. IEMA is not in favour of granting exemptions to smaller sites, brownfield sites or commercial and industrial sites. However, there is a strong argument that the assessment process and net gain approach should be proportionate to the scale of the impact. As such, IEMA would be supportive of smaller sites undertaking a simplified approach, provided that high value biodiversity was not identified during the assessment phase.
8. Examples of a simplified approach might include a tool for applying the Defra metric, and the opportunity to propose use of off-site mitigation or payment to a tariff system rather than delivering and guaranteeing small scale on-site biodiversity net gains.
9. IEMA is not convinced that the brownfield land register is a suitable proxy for biodiversity value, and should not therefore be used as a criteria for an exemption or simplified approach. Indeed, derelict land is a BAP habitat class and therefore may contain important biodiversity that will need to be appropriately assessed, protected and managed.

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

10. Yes. IEMA agrees that the Defra metric should allow for adjustment to reflect important local features such as local sites. The rationale for any such adjustments would need to be clearly set out and justified by Natural England (within the metric) and with supporting information from the relevant local authority.

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

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

11. IEMA does not have sufficient evidence to determine whether a robust district level licencing approach for great crested newts should be mandatory. However, IEMA strongly cautions against any assumptions that district level licencing approaches for great crested newts will be an effective conservation approach for other protected species.

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

12. IEMA considers that the concept of BNG could and should be extended to a much wider range of environment attributes. Specifically, IEMA considers that a “natural capital net gain” approach

should be developed and implemented. This could ensure that development does not harm, and can contribute to, our stocks of natural capital that society and the economy depends upon, and that are often lost during the development process.

13. IEMA sees merit in developing the Defra metric further to incorporate natural capital and ecosystem services considerations and would like to participate in any further policy development on the metric, or in the area of Environmental net Gain more generally. It will be important to ensure that the approach is consistent with wider environmental policy and legislation necessary to deliver the objectives of the 25 Year Plan.
14. IEMA supports the objective that well planned, innovative market approaches be carefully and synergistically developed to maximise beneficial (net-gain) outcomes. At the same time unintended consequences should be guarded against. One example where policy complementarity can be further planned is in relation to utilising Biodiversity Net-Gain funding alongside carbon funding for the Woodland Carbon Code. There is a strong case for ensuring that both approaches can be utilised for project sites and good quality habitat creation (maximising additionality and without conflicts or duplication).
15. Finally, BNG and Environmental Net Gain sit within a much wider framework of environmental governance that will need to be implemented as part of the proposed Environment Bill. This legislation should encompass the full range of environmental effects and will need to be joined up at a local level to allow for integrated spatial planning and delivery.

Measuring biodiversity and achieving net gain

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

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

16. The most recent version of the Defra metric is a substantial improvement on the original version. IEMA considers that it is suitable as a minimum benchmark that can be applied across the country in a mandatory scheme. This is important for a consistent and transparent approach to achieving biodiversity net gain. Local Authorities may also wish to apply their own (supplementary) metrics as an additional check and balance. As long as the core metric is used and is ensuring a baseline consistency, this should not be prohibited.
17. However, IEMA does not consider that the Defra metric, or indeed any metric, can operate as the sole determinant of the achievement of biodiversity net gain. Rather, it is a necessary minimum measure that must be interpreted alongside expert advice and within the IEMA, CIRIA, CIEEM principles-based approach¹ – ensuring that the proposed package of biodiversity gains does indeed leave biodiversity in a better state than before the development occurs.
18. This combination of use of the Defra metric combined with expert judgement is vital if the Principle of “like for like or better” is to be achieved. It is also of paramount importance the more the idea of using a metric as a proxy for biodiversity is stretched. If this assessment and approach is not transparent and genuinely beneficial for biodiversity it could undermine the entire concept of biodiversity net gain and cast doubts on the creditability of the mandatory scheme.
19. IEMA considers that the metric can and should continue to be improved over time. This will be driven by experience and lessons learned to ensure that biodiversity gains are genuine and appropriate. However, it will also be driven by the Government’s commitment to deliver Environmental Net Gain.

Is a mandatory 10% increase in biodiversity units the right level of net gain?

20. IEMA members hold a range of view on the most appropriate level of gain to be required. The following indicative results are based on a snapshot survey of 300 IEMA members interested in BNG:
 - 14% felt that less than 10% gain was appropriate
 - 37% felt that 10% was appropriate
 - 29% felt that 20% was appropriate
 - 20% felt that more than 20% was appropriate

¹ IEMA, CIRIA and CIEEM (UK) Principles for BNG – 2016 - <https://www.iema.net/policy/natural-environment/principles-and-guidance>

21. Taking this into account, along with our experience and expertise in working on issues associated with biodiversity offsetting and biodiversity net gain, IEMA considers that 10% is on the low side and a higher figure of 15-20% is recommended.
22. It is likely that the reasons for many members to seek a higher amount of gain will be to ensure that the buffer is sufficient for predicted gains in biodiversity to be delivered on the ground. While this may be able to be achieved through the metric, and through supporting mechanisms such as appropriate ecological assessment, monitoring and audit, it is nevertheless a valid concern. A further factor raised by professionals is to address the trend and time lag between biodiversity loss and the related biodiversity gain (i.e. a dynamic baseline approach may warrant further consideration and compensation)
23. A higher figure would also reflect the parlous state of biodiversity in England the huge challenge of restoring it to a better state. Should a tariff system be introduced with the scheme, a higher figure may be more achievable for all developments.

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

24. Following the mitigation hierarchy is a key principle of BNG. It is also a core principle of good planning. IEMA is therefore opposed to proposals to allow for the mitigation hierarchy to be bypassed. This is particularly the case for avoiding and minimising adverse effects.
25. However, there may be some flexibility to combine the latter stages of the mitigation hierarchy where on-site restoration would normally be a separate rung in the hierarchy. One example may be in areas that are densely populated and with exorbitant local land values. IEMA would wish to be consulted on the nature of the suggested 'clearly defined circumstances'.

Would this [Defra's proposed approach to spatial preferences of offset sites] be an appropriate approach to directing the location of new habitats?

26. IEMA considers that the approach set out in the consultation paper is appropriate. We support the preference for delivering gains locally and we strongly support the proposed approach of the development of local plans or strategies to deliver biodiversity gains. Without these two key components in place there will be little chance of achieving landscape-scale biodiversity outcomes in keeping with the Lawton Principles of connectivity and scale. We recognise the need for strategic landscape scale approaches, which in some cases may counter against local delivery.
27. Taking this one step further, IEMA considers that there is significant benefit in combining a number of different local or regional plans into a single plan. For example, Defra's 2015 Smarter Environmental Legislation project identifies at least 35 different environmental spatial plans or instruments. IEMA will be making more detailed policy proposals in this area in our submissions on the proposed Environment Bill.

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

Should a baseline map of broad habitats be developed?

- *Should this be applied, as a minimum baseline, to: a. net gain calculations for all development? b. net gain calculations in cases of suspected intentional habitat degradation?*

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

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

28. IEMA is concerned that the introduction of a mandatory BNG scheme could lead to perverse incentives to purposefully degrade land. However, it is difficult to predict the likely scale and damage that this may result in. It is therefore essential that resources are frontloaded to ensure that good baseline data is available across the country that can be used as part of any assessment of BNG. Some (not all) Local Authorities will have contributory data such as land-cover maps, phase 1 habitat surveys, etc.
29. IEMA considers that, with suitable guidance, area-based baselines across the Country (developed against consistent criteria) should form part of any assessment of baseline for calculating BNG. The exact approach will need consideration, (e.g. they could be County level plans, based upon further development of Natural Character Areas or a new approach).
30. A potential approach to baselining and degradation avoidance, may be a regime where developers promptly complete a basic survey for development land purchased and Local Authorities similarly identify, and survey land allocated for biodiversity offsetting. This is a complex field however and further discussion is warranted with Local Authorities and responsible developers.
31. The use of area-based baselines will have numerous additional benefits and could be combined with other data to reveal whether or not genuine net gains in biodiversity have occurred over time and may help with the assessment of natural capital as well.
32. Some IEMA members considered that a more detailed baseline survey could be mandatory at the point of any land changing hands. This would provide additional data points and would reduce the likelihood of a developer intentionally degrading land.

Delivering biodiversity outcomes

The provision of compensatory habitats would need to be guided by habitat opportunity maps. At what scale should these maps be developed? a. Locally (e.g. local authority or National Character Area) b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally

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

33. IEMA supports the concept of habitat opportunity maps. These will be necessary to achieve the Lawton Principles and could be developed using complementary data necessary to establish area-based baselines. National coverage should be sought, but priority areas may be identified for early attention. The local boundary would make sense to be on the basis of national character areas. This would ensure relevance to locally strategic context and also would encourage Local Authorities to collaborate in their respective approaches towards shared 'natural areas'. An alternative approach would be to use Local Authority (LA) boundaries but to request / require neighbouring LA's to collaborate with data and approaches concerning such 'shared areas'.

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

What further measures would help to ensure that the market provides: a. Sufficient biodiversity units for development? b. Cost-effective biodiversity units?

34. IEMA strongly supports the development and introduction of an accreditation scheme, as suggested by Defra, as a way of ensuring that BNG is delivered effectively. There would be some benefit in considering whether or not brokers should also be registered and accredited.
35. IEMA is concerned that there will be early (and perhaps continued) pressure on the system to deliver biodiversity units so that development may proceed. This will also put pressure on the fundamental principle of "like for like or better". We are concerned that it may lead to a market for easy to deliver biodiversity units that may not reflect genuine gains in biodiversity and may lead to losses in important habitat types that cannot easily be justified as being outweighed by gains in other habitat types. This could threaten the credibility of the scheme and would not deliver on the stated outcomes of the policy².

² Refer also to paragraph 14 and the important issue of 'joined up' policy approach. Synergy with the Woodland Carbon Code, could provide potential for credible projects, delivering on additionality and supporting the growth of market supply.

36. IEMA considers that it is vital to ensure that sufficient support is given to providers of biodiversity gains (including setting the tariff high enough) and that local priorities and a local plan or strategy be developed and communicated, to ensure that appropriate habitat can be created or enhanced in the local area.

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

If so, what should the minimum duration be? a. Less than 25 years b. 25 to 30 years c. Longer than 25-30 years d. Permanent

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

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

37. We support the principle that gains should be permanent, or for as long as the lifetime of the impact. However, the extent to which this needs to be actively managed and how this might practically occur is a more complex question. IEMA considers that 25 years (a generation) is the minimum period that should be set for a legal obligation concerning delivery of BNG.
38. IEMA also supports the use of “conservation covenants” as these have shown to be effective in countries such as New Zealand, protecting habitat and placing a requirement on at least some level of management in perpetuity. Time-bound covenants could also be considered.
39. We support the use of a trust or endowment approach as it would be imprudent to rely on the developer to remain in business and able to pay for the necessary management of the offset site without a form of insurance or secured funding for the duration of the offset. A further consideration would be to utilise established, credible conservation partners to create and conserve habitats in perpetuity (for example RSPB, The Wildlife Trusts and the Woodland Trust).

Calculating and collecting the tariff

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

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

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

40. IEMA has concerns over the inclusion of a tariff system as part of a mandatory BNG scheme. We note that the primary reason for its inclusion appears to be a desire that that BNG is “simple” and that it does not slow down development. However, it could be structured to work against the fundamental principles of BNG (such as the Mitigation Hierarchy and Like for Like or Better). It therefore carries some risks. If a Tariff scheme is progressed it will require careful planning to ensure that the IEMA/CIRIA/CIEEM 2016 good practice principles for BNG are not bypassed.
41. IEMA considers that the following approach should be adopted if a tariff scheme is considered necessary:
 - a. It should be reviewed after 3-5 years to assess its effectiveness in delivering like for like or better BNG and to understand any unintended consequences of such a market-based approach
 - b. It should be implemented as a stop-gap measure until such time as local and regional BNG markets have established themselves and can remove the need for a tariff
 - c. The tariff should be set higher than is currently proposed. While it is a judgement call, a higher tariff would be more precautionary and would reflect anecdotal evidence that IEMA has gathered that it may be on the low side. This would also help to speed up the establishment of local and regional offset providers
 - d. The relationship between biodiversity lost and biodiversity gained must be transparent to stakeholders, allow for some level of consultation, and be able to be interrogated to be able to demonstrate BNG at a project level. It must be possible to compare habitat types that have been lost and gained to ensure that like for like or better has been achieved at a project level
 - e. Use of the tariff should trigger an increased scrutiny of the project in terms of whether or not the mitigation hierarchy has been demonstrably followed, noting that there may be a lower bar for smaller developments (see above).

How should the tariff revenue be collected? a. Locally (e.g. through a local authority) b. Nationally (e.g. through Natural England or another national body) c. Other, please specify

How should the tariff revenue be spent? a. Locally (e.g. through a local authority) b. Nationally (e.g. through Natural England or another national body) c. Through a blended model, allowing spending at both levels d. Other, please specify

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

42. IEMA supports the blended model proposed by Defra, whereby money is spent according to national nature strategies, but on projects that are as close to the development site as is possible in the circumstances.

Delivering Net Gain within the planning system

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

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

Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through: a. local authority administration? b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?

43. There are significant concerns about whether local authorities have the skills, knowledge, resources and capacity to support and deliver mandatory biodiversity net gain. IEMA is not convinced that the scheme can operate robustly without significant additional support, guidance and access to professional ecological and environmental advice. Central Government should not expect to pass on the entire burden of delivering mandatory BNG to local authorities and developers.
44. IEMA supports a notice period of at least a year before the scheme commences. During this time, it will be important that training, support and any possible additional funding mechanisms are put in place for local authorities and other key actors (potentially Natural England and Professional bodies such as CIEEM and IEMA). Other important BNG building blocks should also be progressed in this period (e.g. Area-based surveys and plans).
45. Globally, the biggest failing of biodiversity offsetting schemes, and indeed biodiversity commitments associated with development, has been a lack of capacity and resources in consenting bodies, particularly for monitoring and enforcement, but also more generally.

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

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

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

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

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

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

46. IEMA agrees that most disputes could be resolve during pre-application discussions or during the determination of planning applications. The existing right of appeal in the planning system would also be available. However, there is merit in developers, planning authorities and indeed stakeholders being able to call upon independent advice regarding net gain calculations, whether or not this be an additional arbitration process or to feed in to existing processes.

Monitoring and evaluation

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

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

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

47. Monitoring and evaluation will be central to the success of any BNG policy. As noted above, it is the number one source of failure globally for offset projects and indeed probably for consent conditions relating to biodiversity more generally. IEMA is therefore supportive of the full range of measures proposed by Defra, particularly in the early stages of implementation of the scheme.
48. Specifically, IEMA supports:
 - a. Continued use and reliance on the BNG Principles
 - b. Development and implementation of the proposed BSi Standard
 - c. Training schemes and accreditation of key components of the system including survey, offset delivery and brokerage
 - d. Insurance schemes or guarantees of funding for habitat enhancement and creation projects necessary to achieve BNG
49. IEMA also strongly supports the need to continue to improve and innovate in data collection and mapping.
50. Finally, IEMA considers that the importance of auditing, validation and verification of the net gain process and results cannot be overstated and must be central to the final policy proposals.