

# Consultation on Biodiversity Net Gain Regulations

## Briefing Note

21/01/2022

Ref No : 365

### Overview:

On 11 January 2022, Defra launched its consultation on the Biodiversity Net Gain Regulations, seeking views on how the legislative requirements for Biodiversity Gain being progressed through the Environmental Act can be implemented within the Planning System.

The variety of all life on earth or biodiversity is in rapid deterioration both nationally and globally and unless decisive action is undertaken, we will reach an Environmental tipping point where biodiversity enters a point of irreversible decline. One method of Government intervention to divert from this current projected trajectory through Planning and the Built Environment is through a requirement for all new developments in England to deliver Biodiversity Net Gain (BNG). In short, this means that development will have to leave biodiversity in a better state than it was in beforehand.

This requirement of BNG has been introduced by the Environment Act 2021 which gained Royal Assent on 9 November 2021. However, despite the bill being enacted, there is a two-year transition period, with all planning permissions after this grace period subject to a mandatory pre commencement condition requiring delivery of a 10% net gain in Biodiversity from the pre- development baseline position. However, we are finding that many local planning authorities are already requiring evidence of a net gain as part of the planning application.

Going forward, the Biodiversity Net Gain of a scheme will need to be demonstrated through the submission of a Biodiversity Net Gain Plan prepared in accordance with the DEFRA's Biodiversity Net gain metric. A link to the details of how to calculate the biodiversity net gain of a project or development can be accessed via the link below:



<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>

The Biodiversity Plan will need to establish steps taken by a proposed development to achieve the biodiversity gain objective of improving the biodiversity value of onsite habitat by 10% compared to the pre-development baseline for a minimum period of at least 30 years. Ten percent BNG will need to be attained either in the form of onsite habitat improvements, through off site BNG improvements or through the purchase of biodiversity credits from the Secretary of State. In certain circumstances where existing habitats are considered irreplaceable BNG improvements will only be accepted through an on-site solution. Onsite enhancement will be secured by planning condition, a Section 106 Agreement or a Conservation Covenant and offsite enhancement will require a Section 106 obligation or a Conservation Covenant and will be registered on a new publicly available biodiversity gain site register.

For clarity irreplaceable habitats include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, slat marsh and lowland fen and will be protected in line with Paragraph 180 of the NPPF (2021).



### Exceptions:

At present there is a limited list of exceptions to the BNG net gain requirements being applied on every planning permission in England after the transition period. The current exceptions include:

1. Permissions granted by development consent order
2. Urgent crown development

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## BNG Proposals Consultation:

A joint consultation from the Department for Environment, Food and Rural Affairs, Government Agency Natural England and the Department of Levelling Up, Housing and Communities setting out the BNG net gain requirements in more detail was published on 11 January 2022. Details of which can be found under the following link.

Consultation on Biodiversity Net Gain regulations and implementation :



<https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-biodiversity-net-gain-regulations/>

The consultation document gives details on the scope of the new regulations required to implement BNG and how it would work for both development consented via the Town and Country Planning Act 1990 and for major infrastructure projects via the Planning Act 2008.

The consultation document states that exemptions are now currently only proposed for “developments impacting habitat areas below a ‘de minimis’ (minimal) threshold,” for householder applications and for change of use applications. However, additional exemptions are being considered, for example, for the “creation of biodiversity gain sites” and for self-build and custom housebuilding.

The consultation is asking developers, planning authorities, environmental professionals, and landowners for their views on the details of how biodiversity net gain should be delivered when building new housing or commercial development and closes on 5 April 2022.

Should you have any views on the BNG proposals which will affect all development from 2023 onwards we would urge you to contribute to the consultation. DLP Planning can assist in preparing written representations, so please get in touch.

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