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Ref: NFU BNG Consultation Response

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NFU Consultation Response: Biodiversity Net Gain (BNG) Regulation and Implementation Consultation

The NFU represents 55,000 members across England and Wales. In addition, we have 20,000 NFU Countryside members with an interest in farming and rural life.

Part 1 – defining the scope of the biodiversity net gain requirement for Town and Country Planning Act 1990 development

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: [Yes (which of the following thresholds do you think is most appropriate: 2m², 5m², 10m², 20m², 50m², other threshold – please specify) / No (please explain why not) / Do not know]

Yes – other threshold. The NFU agrees with the proposal to exempt development which falls below a de minimis threshold from BNG requirements for area-based habitat. In most cases developments on agricultural units are exempt from BNG through the General Permitted Development Order (GPDO 2015) including certain developments up to 465m². The suggested thresholds would be too small in an agricultural and rural context (e.g., large farm equipment and buildings), and a permitted development 465m² de minimis threshold would be more appropriate. There is however a concern that this threshold would not account for linear developments e.g., farm tracks, cow tracks. As such the NFU calls for a standalone agricultural development exemption for both area and linear habitats that includes temporary agricultural developments, linear and agricultural developments that fall out of any threshold and sites without permitted development.

- b. for linear habitat (hedgerows, lines of trees, and watercourses): [Yes (which of the following thresholds you think is most appropriate: 2m, 5m, 10m, 20m, 50m, other threshold – please specify) / No (please explain why not) / Do not know]

Yes – other threshold. The NFU agrees with the proposal to exempt development which falls below a de minimis threshold from BNG requirements for linear habitats. In an agricultural context linear habitat would commonly interact with gateways (no planning permission required), and farm tracks, although this would also apply to a development site that overlapped these linear features. For example, a barn expansion below the area exemption could still trigger BNG on the hedge as it exceeds the linear threshold. For this reason, the permitted development 465m² de minimis threshold would be more appropriate. The NFU continues to call for a standalone agricultural development exemption for both area and linear habitats that includes temporary agricultural developments, linear and agricultural developments that fall out of any threshold and sites without permitted development.

2. **Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?** [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes.

3. **Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?** [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. A change of use application often won't involve a significant change to the existing footprint and as such resulting habitat loss will be minimal.

4. **Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?** [Yes, only for biodiversity net gain (please explain why) / Yes, also for some other environmental mitigation purposes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. The primary purpose of BNG is to improve the biodiversity of a site/project, it doesn't seem appropriate to then require BNG on BNG. Furthermore, if secondary net gain is required, it would effectively increase the percentage of net gain for off-site delivery and create a never-ending escalating chain.

The NFU recommends that the exemption should also include:

- Biodiversity off-setting sites associated with National Significant Infrastructure Projects (NSIPs)
- compensatory habitats when the development impacts a Site of Special Scientific Importance (SSSIs) or Special Protection Areas (SPAs) etc. if the biodiversity gain objective isn't broad enough to cover it
- Other environmental mitigation sites, such as Nitrogen or Phosphate mitigation off setting sites, and the subsequent nature-based solutions which result in land use change or require planning permission to enhance the biodiversity e.g., habitat creation

5. **Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?** [Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. Multiple generations often live on farms and require accommodation to support this and to help develop their business e.g., farm B&Bs and accommodation. If these developments weren't exempt the business case for the development to go ahead would be likely to be financially prohibitive and yet the delivery of BNG would be small. This seems perverse when many agricultural businesses are already making great strides to support biodiversity and can only continue to do so in the future if they remain financially viable. In most cases these developments would be exempt through the de-minimis threshold however if this isn't large enough to cover the developments, an exemption to support this would be recommended.

6. Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above? [Yes / No (please explain why not) / Other (please tell us more) / Do not know

NA.

7. Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement? [Yes / No (please explain why not) / Other (please tell us more) / Do not know

No.

Due to the varying lifespan of temporary projects, many short-term temporary projects won't be restored to the same or better condition within 2 years since the loss and would therefore fall into the 30-year BNG requirement, making many short-term temporary projects unviable. For example, planning permission may be granted for 5 years, therefore it would be more appropriate for temporary permission to be accompanied by a requirement for net gain to be secured for the duration of the project plus remedial works. This would allow for fluidity in the market as gains which were associated with temporary permissions could then potentially be made available/enhanced for future projects.

Although temporary permitted development rights (28-day rule) would remain exempt, this may not apply to all temporary developments as many temporary agricultural structures would be in situ for more than 28 days. For example, this could include polytunnels, temporary slurry storage, mobile pig arcs, mobile poultry sheds and temporary housing for farm labour.

The NFU calls for a standalone agricultural development exemption for both area and linear habitats that includes temporary agricultural developments, linear and agricultural developments that fall out of any threshold and sites without permitted development.

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 / No (please explain why not) / Other (please tell us more) / Do not know]

No.

As outlined in Q1, Q7 and Q10, the NFU calls for a standalone agricultural development exemption for both area and linear habitats that includes temporary agricultural developments, linear and agricultural developments that fall out of any threshold and sites without permitted development.

In response to this specific question, the NFU considers that it is essential that developments which would fall within permitted development rights outside of protected landscapes are exempt from biodiversity net gain in these protected areas. Developments in protected landscapes already face additional costs because of the need to go through the planning process and adding net gain as well further constrains farmers in these areas. Currently planning and project implementation costs are already a third higher in National Parks than outside and the addition of BNG will only add to those costs; these increased costs come from additional requirements set by the National Park to secure planning permission (e.g., specifying building style or materials).

This puts those farmers at a disadvantage compared to those in other parts of the country, and risks increasing the divide between regions at a time when the government is pursuing its levelling up agenda. Farming is often an important part of the economy in these protected

landscapes, helping to support the local communities as well as manage the landscapes for which these areas are designated. It is, therefore, essential that farmers are supported to develop sustainable and viable businesses to ensure the long-term environmental and cultural qualities for which these areas are valued are preserved.

Furthermore, without this exemption developments to improve the environmental outcome of protected landscapes e.g., expanding cattle sheds to prevent over poaching of the ground in winter, or to offer other environmental/animal welfare benefits could be impacted due to the increased costs of these projects, which may offer little, if any, productivity benefits to the farmer.

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? [Yes, exempt (please explain which development types and why they should be exempt) / Yes, a modified requirement (please explain which development types and why they should face a modified requirement) / No / Other (please tell us more) / Do not know]

Yes.

- Subsurface works - underground pipelines and mineral rights mining when the land will be restored to its original condition once the project is complete (even if over 2 years). Consequently, the NFU considers that need for net gain in relation to these projects should be considered on a case-by-case basis, and the duration of any net gain requirement being linked to the duration of the project.
- Temporary infrastructure (may fall under NSIP) - areas of land used during the development of a project for example for access or to store equipment that will be restored to its original condition once the project is complete (even if over 2 years); if net gain is required in relation to these elements the NFU considers that the duration of the net gain should be related to the duration of these elements of the works.

As outlined in Q4 further offsetting sites should be exempt as follows:

- off-setting sites associated with National Significant Infrastructure Projects (NSIPs)
- compensatory habitats when the development impacts a Site of Special Scientific Importance (SSSIs) or Special Protection Areas (SPAs) etc. if the biodiversity gain objective isn't broad enough to cover it
- Other environmental mitigation sites, such as Nitrogen or Phosphate mitigation off setting sites, and the subsequent nature-based solutions which result in land use change or require planning permission to enhance the biodiversity e.g., habitat creation

10. Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity gain requirement? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Other. The consultation proposal not to exempt developments within statutory designated sites for nature conservation from mandatory BNG makes sense, but it does mean that where development takes land from a designated site (for example SSSIs) there will be two separate obligations:

- (1) to replace the habitat lost under the protected site regime; and
- (2) to deliver net gain (BNG requirement).

The NFU considers that there may be value in reviewing how these processes could work together, to implement a single streamlined and proportionate approach that addresses what is needed for compensatory habitat (based on the habitats condition) and net gain in a single plan.

To ensure agricultural businesses can remain economically viable, farmers need to be able to access development on and around designated sites and not be limited or disadvantaged by the over complexity of BNG requirements. As outlined in Q1, Q7 and Q8 the NFU calls for a standalone agricultural development exemption for agricultural developments, including those which impact on designated sites if they are to be subject to the BNG requirement.

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?** [Yes / No (please explain why not) / Do not know]

Yes. The NFU agrees with the proposal to exclude this development from the BNG requirements. However, the definitions (including the habitats condition) will be important as it needs to be clear which habitats are irreplaceable, so that those involved with projects which may impact on irreplaceable habitat are aware of that fact at the outset.

Whilst there needs to be a degree of flexibility for dealing with irreplaceable habitats to take account of individual circumstances, there also needs to be clear and sufficient guidance on irreplaceable habitats for developers. The guidance should ensure a consistent national approach and help developers understand what is likely to be required if a development impacts irreplaceable habitat (questions 11.d and 11.e.).

- 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?** [Yes / No (please explain why not) / Do not know]

Yes. Requiring the publication of a similar level of information for irreplaceable habitats seems sensible, but it needs to be appropriate for the requirements in place for irreplaceable habitats and not result in disproportionate burdens.

- 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?** [Yes / No (please explain why not) / Do not know]

Yes. The metric should be capable of valuing enhancements to the value of irreplaceable habitats given the importance of ensuring that these habitats are well maintained and improved. This approach could result in additional resources being available to enhance these habitats, ensuring that they deliver the maximum benefits for the environment.

- 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 / No (please explain why not) / Do not know]

Yes. The definitions in the Regulations need to define irreplaceable habitat sufficiently to provide clarity as to what is/isn't regarded as irreplaceable habitat. Supplementary

guidance would be useful but doesn't remove the need for the terms to be properly defined in the Regulations.

Any supplementary guidance needs to be appropriate for the intended audience. In this context, the guidance is likely to need to contain detailed technical information and expand on what is said in the legislative framework in order to be useful for those who need to implement the requirements. It may, therefore, create a framework to facilitate the provision of this technical guidance in the legislative framework if that is necessary to ensure that it can provide detailed, technical information.

- e. **The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?** [Yes / No (please explain why not) / Do not know]

Yes. What constitutes irreplaceable habitats should be clear from the Regulations and supplemented by guidance. However, the NFU agrees there also needs to be 'a set of principles to guide the implementation of bespoke compensation approaches'. These guiding principles should outline how compensation is addressed to ensure a degree of consistency at a national level, although a degree of flexibility will also be needed as all sites are different.

Without national guidance setting out the approach, there is a risk of inconsistent local decisions, making the system less predictable for those undertaking developments. Those involved in one-off projects, such as farmers, will be particularly reliant on this guidance as they seek to navigate the system with little prior knowledge.

Part 2: Applying the biodiversity gain objective to different types of development

12. **Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?** [Yes / No (please explain why not) / Do not know]

Yes. Requiring some information at the outline stage to explain the approach taken seems reasonable as it will demonstrate that the BNG requirements have been considered. However, we recognise that in practice plans may change as the development progresses, so requiring the detailed plan to be approved at each stage seems sensible as it allows for adaptation where necessary.

13. **Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?** [Yes / No (please suggest alternative approaches) / Do not know]

No. In the case of Reviews of Old Mineral Permissions (ROMPs) a time limit for the review and re-opening of permissions should be imposed as quarries and mine workings can during this time become sites of high biodiversity value. This could be 5 or 10 years.

14. Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. A simplified approach to the metric for smaller sites is welcomed. It should be accompanied by sufficient simplified supporting guidance to accommodate for this and reduce any time/cost burdens.

If BNG is to be required for what would otherwise be permitted development in designated landscapes, it is vital that the small site exemption works for this type of development to minimise the disadvantage faced by those farming in these areas. In addition, a simplified small site exemption could benefit others who are undertaking small scale developments, helping to ensure that the costs are proportionate to the nature of the development, and reducing the risk of small-scale projects being made unviable by an overly complex BNG requirement.

15. Do you think a slightly extended transition period for small sites beyond the general 2-year period would be appropriate and helpful? [Yes, a 12-month extension (please explain why) / Yes, a 6-month extension (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. An extended transition period would provide farm business with more time to make businesses decisions to ensure finance is in place for future development projects that require BNG e.g., new slurry store. The transition period should be linked to business planning cycles and as such a 5-year extension would be more appropriate to give small agricultural businesses time to prepare.

16. Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites? [Yes (please outline your suggestion and explain how it would help) / No / Do not know]

Yes:

- A web-based resource showing best practice, innovative and typical applications of BNG.
- The NFU calls for a standalone agricultural development BNG exemption for both area and linear habitats that includes temporary agricultural developments, linear and agricultural developments that fall out of any threshold and sites without permitted development. A simplified approach for agricultural developments would reduce the time and cost burden and enable these businesses to remain viable while they undergo the biggest reform and transformation of British agriculture since 1945.

Nationally Significant Infrastructure Projects (NSIPs) Section

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 requirement to NSIPs? [Yes, exemption (please define your proposed exemption) / Yes, percentage reduction (please define your proposed reduction) / Yes, other modified requirement (please define your proposed modified requirement) / No / Do not know]

The NFU feels that it is important to recognise that not all NSIP projects will result in permanent habitat loss. For example, offshore windfarms and other cable projects only require permanent land onshore to be taken for permanent structures such as a converter station required to facilitate the scheme whilst other land is only taken temporarily to lay the cables. Any hedgerows or other habitat features removed to allow cables to be laid including soils, would be reinstated on completion of the scheme. These temporary elements of the scheme can involve significant areas of land, so the NFU believes that these temporary areas should either be exempt from BNG altogether, or that the duration of any BNG should be linked to the duration of the adverse impacts.

The NFU feels that the requirement of 'no net loss' should be maintained for the elements of a scheme, where a habitat will be reinstated rather than lost permanently. Further, the NFU considers that a lesser percentage of BNG should be applied to temporary elements of these projects to reflect the project having a lower impact on habitats, especially given the public benefits these schemes deliver.

18. Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs? [Yes (please explain why) / No (please explain why not) / Other (please tell us more) / Do not know]

The NFU feels that approaching the BNG requirements for NSIPs through National Policy Statements would provide the framework necessary to ensure that the requirements are applied and delivered. National Policy Statements can also be reviewed more quickly and easily by Government than other approaches such as primary legislation, should this be required. National Policy Statements are also a consideration in the recommendations made by Examining Authorities, which would ensure the delivery of this requirement is transparent and consistent across all projects.

The NFU would like to see a draft of a common statement so that comments can be fed back and to make sure that the common statement is fit for purpose

19. Do you consider that the November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement? [Yes (please, provide any supporting evidence or justification) / No, it should be later (please provide any supporting evidence or justification) / No, it should be sooner (please provide any supporting evidence or justification) / Do not know]

The NFU considers that the date of November 2025 may be an appropriate date from which NSIPs accepted for examination will be subject to the BNG requirement. However, it is essential that Examining Authorities and developers are aware of the biodiversity statements once published in November 2023 and of the date on which BNG requirements will apply to NSIPs.

20. Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements? [Yes (please explain why) / No (please explain why not) / Do not know]

The NFU agrees that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements.

21. Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency? [Yes (please explain why) / No (please explain why not) / Do not know]

The NFU is supportive of developers/ companies e.g., Network Rail/ Water companies delivering biodiversity enhancements within their own landholdings, where it is possible to do so. This may remove the need to acquire additional land from land holdings/ farm businesses that will be impacted by land being taken for the scheme itself, to deliver BNG. The NFU would like to see land being acquired to fulfil this requirement being used efficiently to deliver the maximum value habitat on the minimum amount of land area, to ensure the land being taken out of agricultural production is the absolute minimum. This requires close working and early and transparent communications with landowners/ and managers who are best equipped with local knowledge and expertise to advise on any land use change and BNG opportunities.

22. Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs? [Yes / No (please explain why not) / Do not know]

The NFU is supportive of calculations and a BNG plan being prepared prior to the submission of a DCO application to the Planning Inspectorate. It is important that a developer can clearly demonstrate the methodology for calculating the pre-development biodiversity value and the proposed post-development biodiversity calculations. It is also important that developers are open and transparent about how and where they will deliver environmental mitigation/BNG to allow any issues or concerns to be raised through the examination process by landowners who will be having land compulsorily purchased. Each landowner will want to understand why a certain area of habitat needs to be created on that landholding to achieve BNG.

As part of the BNG plan, the NFU would like developers to provide a draft management agreement so that landowners can be fully informed of the obligations on them if they were to retain ownership of the land on completion of the scheme. Prescriptions need to be set out clearly along with the payments for the management. This would enable landowners to make informed decisions when entering into voluntary negotiations with developers and understand the short term and long-term impact on their property and business. The NFU does not believe that land for BNG should automatically be included within a developer's red line boundary for the order limits.

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)? [Yes (please explain why) / No (please explain why not) / Do not know]

Yes.

The NFU believes that it is important that all areas used for delivery of habitat enhancement/net gain are exempt from the BNG requirement, regardless of whether that habitat is onsite or off-site. Requiring that BNG is delivered on areas within the development boundary, would effectively mean that developers are required to deliver BNG on top of BNG.

However, the NFU is concerned about the use of compulsory purchase powers being used to acquire land, which is to be used for habitat creation purposes, and believes that the use of compulsory purchase powers to acquire land for BNG purposes should be restricted. The use of compulsory purchase powers to acquire agricultural land can have a devastating impact on farm businesses, and the NFU strongly believes that the use of such powers should be limited to areas needed for the infrastructure project concerned. The NFU considers that where additional land is needed for habitat creation or to deliver BNG, there should be a free and open negotiation between the provider and the landowners to identify the most suitable locations for the works. This approach is likely to yield results which deliver best for the environment whilst minimising the adverse impacts on landowners. It may, therefore, be appropriate to consider how this could be achieved either through statutory control, robust guidance or through a multiplier in the matrix to penalise the use of compulsory purchase powers to take land purely for the delivery of BNG obligations.

24. Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)? [Yes (please state what information) / No / Do not know]

Do not know.

25. Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs? [Yes / Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated / No, it should be longer / No, it should be shorter / Do not know]

The NFU acknowledges that 30 years is the minimum period specified within the Environment Act for BNG generally and believes that the same threshold should be applied to NSIPs. Increasing the minimum period for BNG may deter some landowners from entering into net gain commitments, making it more difficult, and more expensive, for these projects to secure the BNG needed to off-set the development.

However, the NFU notes that 30 years would be the minimum duration and considers that it should be open to the parties to negotiate longer term agreements if they wish to do so.

26. Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain? [Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / Do not know]

The NFU acknowledges that 30 years is the minimum period specified within the Environment Act for BNG generally and believes that the same threshold should be applied to NSIPs. Increasing the minimum period for BNG may deter some landowners from entering into net gain commitments, making it more difficult, and more expensive, for these projects to secure the BNG needed to off-set the development.

However, the NFU notes that 30 years would be the minimum duration, and considers that it should be open to the parties to negotiate longer term agreements if they wish to do so.

27. Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain? [Yes, to enable compulsory acquisition (please explain what is needed) / Yes, to manage impacts of compulsory acquisition (please explain what is needed) / Yes, both (please explain what is needed) / No / Do not know]

The NFU strongly feels that land to deliver the BNG element of a scheme should not be able to be compulsorily acquired by a developer. Compulsory acquisition can have significant negative impacts for farms and farming businesses. These impacts can result in businesses having to restructure, land being severed, impact on the viability of the farming business and in some cases the extinguishment of the business itself. The NFU would like to see the impact on a farming business kept to an absolute minimum.

The NFU expects developers to reduce the impact on a farm business through the scheme design and therefore, we strongly feel that any additional land acquired by developers to deliver a BNG should be done so by voluntary agreement with the landowner rather than using compulsory purchase powers. The NFU would expect a developer to consult and negotiate with landowners within the local area, with regard to the location and areas of land used for BNG, which may include land located outside of the order limits boundary. An example of this would be where a landowner requests that land for BNG is located in a particularly wet or less productive area of the farm rather than on the most productive areas of the farm.

If a voluntary agreement cannot be met, the NFU feel developers should utilise the land within their ownership to deliver a BNG and if this is not possible then biodiversity credits should be purchased.

As mentioned above, the NFU considers that measures should be in place to discourage developers to use their compulsory powers to acquire land for BNG. This could be in the form of regulatory controls or robust guidance to prevent or discourage the use of compulsory powers, or through the application of a multiplier in the net gain calculations to penalise the use of compulsory purchase powers to acquire land for BNG delivery.

28. Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively? [Yes (please explain what is needed) / No / Do not know]

Do not know/NA.

Part 3: How the mandatory biodiversity net gain requirement will work for Town and Country Planning Act 1990 development

29.

- a. Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan? [Yes / No (please explain why not) / Other (please tell us more)

Do not know]

Yes. It seems sensible to have the option of submitting less detail at the application stage as it could help to reduce costs and time if planning is refused or if plans change.

- b. Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan? [Yes / No (please explain why not) / Other (please tell us more) Do not know]

Do not know. The NFU is not in a position to comment on the specifics, but these suggestions do raise a few concerns:

-The impact of these changes on local authority resource/expertise and the potential for this to lead to delays in planning application approvals and delays to developments. Local authorities must be provided with the resources, tools and training needed to ensure that such delays are minimised.

-The Government's intention to continue to allow higher percentage targets to be set by planning authorities at a local or site level would result in disparity. The NFU believes that there should be a clear and transparent approach to setting targets and as such a national set target that is adhered to by all planning authorities. Businesses should be treated fairly and consistently regardless of local authority location.

30. We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template? [Yes / No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?) / Other (please tell us more) / Do not know]

Yes. The current template is detailed, and guidance should be provided to aid completion, as well as example completed templates also provided. It must be user friendly and also clearer as to who is required to complete this, especially with regards to the concise small site's metric template. It should be simplified to help reduce costs, and you should be able to complete this without the use of an ecologist.

We welcome the fact that the template takes you through on-site, off-site, and credits in preference order.

31. Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development? [Yes (please state what in particular would help most) / No / Do not know]

Yes. The NFU recognises that the current guidance to support the metric is complicated so something simpler is required, especially for the simplified small site metric. The guidance should include key term definitions and links to other relevant guidance e.g., conservation covenant guidance.

32. How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

The Environment Act sets out the minimum period for securing BNG. It is between those contracting parties to agree exact terms and length of the agreement. There is a need for all parties to enter into an agreement fully understanding the long-term consequences of the agreement. In practice, it is likely that many habitats created through BNG will be in place for a very long-term or permanently due to other legal regimes such as Environmental Impact Assessments and the potential for sites to be designated if they are sufficiently high quality. This will, therefore, be a factor landowners consider when negotiating agreements, and may lead to some landowners seeking longer term obligations.

Where sites are not protected through other legal regimes, consideration should be given to ensuring that there is a market for the benefits to be gained through the maintenance and/or further enhancement of these areas to enable landowners to enter into subsequent agreements which will then secure the continued maintenance and enhancement of these areas going forwards.

The Environment Act already creates tools to ensure that longer term agreements can be secured where the parties wish to do so. For example, legal agreements can be negotiated by the parties involved. For example, conservation covenants can be negotiated for any duration the parties wish. However, this may introduce another party, the responsible body, to the decision-making process, potentially making that much more complicated.

If longer term agreements are to be encouraged, it is essential that:

- The legal contracts are fair and proportionate. They need to deal with the length of agreements, disputes, financial arrangements, and termination.
- There is a guarantee that projects can be financed for longer time periods – e.g., by recognising the value in the maintenance of registered biodiversity gains.
- Facilitating the development of environmental markets which enable landowners to sell different benefits from the same area of land where these are compatible - for example landowners should be able to sell carbon off-sets, biodiversity off-sets and other nutrient off-sets separately to different buyers on the same area of land. This would maximise the benefits to the landowner and ensure that land is used efficiently to deliver maximum environmental benefit, as well as helping to incentivise the long-term maintenance of the habitat created.

33. Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes.

It should be possible for a wide variety of businesses/individuals to be able to sell units. There does need to be some oversight and enforcement to ensure delivery and manage conflicts of interest, as such the NFU agree with the governments suggestions to facilitate the operation of the biodiversity unit market (Q34).

These measures should also ensure that the metric and associated guidance sufficiently encourages and incentivises local off-sets purchases.

34. 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? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes.

35. Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes.

Good guidance and clear regulation are fundamental to delivery. A set approach and accompanying guidance should be provided in situations when the habitat creation fails. The BNG metric outlines that delivery does not always lead to the outcome, there is a multiplier to account for this. Therefore, Defra need to address this point in these facilitation proposals so expectations can be managed, and it can be covered appropriately in the full chain of contracts from planning decision to the contract for delivery.

Oversight functions should include an enforcement tool to be put in place to ensure that biodiversity off-sets are delivered on the ground. E.g., if it is secured through planning obligations Local Planning Authorities would need to be resourced properly and have the appropriate expertise to be able to enforce the conditions. Auditing of responsible bodies to ensure that conservation covenants are enforced could also be important – rogue operators must not be allowed to undermine the credibility of BNG or drive down market prices by offering off-sets they have no intention of delivering.

The NFU welcomes the Government's piece of work to provide guidance to farmers and landowners about how committing land for habitat creation or enhancement will affect their eligibility for Agricultural Property Relief and Business Property Relief. It is important the outcome of this work is provided sooner rather than later to ensure farms have time to make business decisions based on this information.

36. Are the proposals outlined here sufficient to enable and encourage habitat banking? [Yes / No (please specify what else could be done and why it is needed) / Do not know]

No.

The NFU feels strongly that greater clarity is needed about how habitat banks would work in practice and what minimum requirements would be. For example, would units have to be sold within a certain period after the habitat has been created? What requirements would have to be in place for securing that habitat whilst in the bank but before being sold? If agreements (e.g., conservation covenants) are entered into before the units are sold extending them may not always be straightforward, so guidance about securing habitat during the banking phase could be important.

NFU members are likely to play a significant role in the provision of BNG land and would therefore require a greater level of detail to protect their current assets and potential investments.

37. Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020? [Yes / Yes, but not this specific date (please suggest an alternative date and explain your choice) / No (please explain why not) / Do not know]

Yes. 30 January 2020 is an appropriate start date and ties in with when the Environment Bill was introduced to Parliament.

38. Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

[Yes (please specify what this limit should be) / No / Do not know]

No. The metric and baseline data should ensure that there is a gain when development is commenced, and the associated BNG creation costs should ensure it is an active market. The market should allow new/enhanced habitats to establish, particularly for long-term projects when the full extent of the gain may only be delivered 10 (or more) years into the project, so allowing habitat to be banked whilst it matures and then sold when it reaches maturity could have biodiversity benefits and help to fund that habitat development. Equally the market shouldn't be saturated with habitat where there is no gain to be had.

The NFU also considers that this could aid with the development of a market for the maintenance of BNG sites once the first 30-year period has come to an end. This is likely to be an important consideration for landowners, who may be more reluctant to enter into agreements which could result in permanent land use change, reducing the long-term productivity of the land, if they are only likely to receive a payment for a relatively short period with limited potential to sell future off-sets or credits.

39. Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient? [Yes / No (please explain which additional criteria should be included or which existing criteria should be excluded, and your reasons for this) / Do not know]

Yes. The eligibility criteria proposed appears to match the requirements in the Environment Act. It will be interesting to see how on-site information on gains will be linked to the register and how any excess gains may then be included in the register.

40. Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties? [Yes / No (please explain why not) / Do not know]

Yes. 28 days is reasonable as a maximum, but no longer than 28 days, particularly as a fee is paid. Local authorities will need access to the resource and expertise to deal with applications in this timeframe, especially as there are a lot of documents included in the list of information requirements to be submitted during the registration process.

41. 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? [Yes / No

(please explain which additional information should be included or which existing information should be excluded, and your reasons for this) / Other (please tell us more) / Do not know]

Yes, however for smaller sites could a reduced requirement approach be taken to help manage the cost and time burden that would affect smaller sites more significantly.

As information changes (e.g., contact details) the register will need to be updated to reflect this. How will this be managed and where will the costs sit?

42. Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register? [Yes / No / Other

(please tell us more) / Do not know

No.

The information requested should be sufficient to ensure that there is clarity about what habitat will be created on the land and what biodiversity gain will result from those works. However, a full habitat management plan for the land is likely to contain a large volume of information which may change and evolve as the project progresses, therefore the benefits of having a detailed management plan at the outset may be limited. If such a plan is required, it should be treated as a private document, and should not be included on the register or made available to the public through other means.

43. Do you agree that the UK Government should allow the register operator to:

a. set a fee for registration in line with the principle of cost recovery? [Yes / No

(please explain why not) / Other (please tell us more) / Do not know]

Yes. Government fees should be proportionate and set at an appropriate level to incentivise an efficient service from the operator. The fees set should be transparent and should be set at a level which is limited to the recovery of reasonable costs; this should not be seen as an additional income generation tool.

b. impose financial penalties for provision of false or misleading information? [Yes /

No (please explain why not) / Other (please tell us more) / Do not know]

Yes, there needs to be a sanction for providing false/misleading information to ensure the integrity of the information provided and covers both intentional conduct and recklessness. However, to reduce the risks of errors being made, consideration should be given to the simplification of the information required and the provision of clear guidance that can be understood by all parties involved (i.e., they don't need to be an ecologist).

The penalties need to be sufficient to deter people from providing false information and proportionate to the conduct of the individual concerned and the surrounding circumstances (e.g., the resources of the person, as this could range from an individual to a large developer).

44. Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. A relatively simple to use appeal process before a panel with appropriate expertise would be beneficial.

Time limits – on the one hand the process needs to be efficient, but the time allowed for lodging appeals after a decision needs to allow time for expert evidence to be gathered. 28 days is a standard time limit for appealing/determining appeals so sounds like a reasonable starting point, but if expert input is required it could be too short. There should, therefore, be a mechanism in place for requesting an extension if additional time is required to gather the required evidence. If an application is rejected it is incumbent on the register operator to clearly outline reasons for the rejection to aid the appeal process.

If there is to be a fee for any appeal, that fee should be refunded if the appeal is wholly or partially successful. This would incentivise good decision making, as well as ensuring that any detriment resulting from an incorrect decision is not further compounded by additional fees being charged by the authority responsible for that decision.

45. Do you agree with our proposals for additionality with respect to:

a. measures delivered within development sites? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. This sounds sensible, provided there is a biodiversity gain, and would potentially encourage developers to look for opportunities to create habitat locally/within the development site which will help to make it accessible to those local to the development.

b. protected species and off-site impacts to protected sites? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No. There is ambiguity in this proposal, which could make the requirements difficult to understand and apply, as well as cost for. If the process is requiring that 10% of the gain should be delivered off-site through 'separate activities', would additional enhancements on mitigation measures for a statutory protected site count to BNG? If the mitigation measure delivers an additional enhancement, it should count towards BNG (as outlined in Q45 proposal), and there should be no limit on the proportion of the net gain arising from such measures, provided they go beyond that which would otherwise be required.

c. on-site impacts on protected sites, and any associated mitigation and compensation? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. This would incentivise consideration of the best possible environmental benefits (e.g., screening with hedges/trees rather than fences if possible). Any mitigation or compensatory measures for on-site and indirect impacts on statutory protected sites should count towards BNG.

- d. **achievement of River Basin Management Plan Objectives?** [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes. Farmers could be involved in projects such as wetland creation, which would deliver water quality enhancements for Water Framework Directive purposes but could also have additional biodiversity benefits so they should be able to sell BNG units from these projects.

- e. **the strengthened NERC Act duty on public authorities?** [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Other. Ahead of any strengthening of duties there would need to be measures in place to maintain consistency between authorities, prevent any risk of devaluing the market and maintain impartiality in decision making e.g. A local planning authority could both make the decision, sell, and manage BNG. This could help reduce the impact of BNG on productive farmland, but also potentially impact how land is managed by local councils and as such tenanted council farms. Safeguards need to be in place to protect the land for those tenants' businesses.

46. 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?** [Yes, both A and B should be eligible / No, only A (non-designated features or areas of statutory protected sites) should be eligible / No, only B (local wildlife sites and local nature reserves) should be eligible / No, neither should be eligible / Other (please tell us more) / Do not know]

Yes (a and b).

The proposal to allow the enhancement of non-designated features of statutory through BNG could maximise the benefits delivered by protected sites, particularly those which are designated for geological rather than biodiversity reasons. The proposed approach should include local wildlife sites and local nature reserves.

The proposal to bring BNG funding into the management of designated sites/local wildlife sites could in turn facilitate their improvement and is therefore welcome. This proposal must allow for stacking of funding/activities as outlined in Q47.

47. **Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?** [Yes / Yes, in some circumstances (please specify which circumstances) / Yes, but within a different range of the high water mark (please specify) / No (please explain why not) / Other (please tell us more) / Do not know]

Other. The NFU agrees that coastal and intertidal habitat enhancements should be eligible. These environments can be diverse and species rich habitats so improving those habitats could be a valuable benefit. There may also be some species which are heavily dependent on these areas, so including these would maximise the range of benefits which can be delivered through BNG. The NFU has no strong views on marine enhancements as these are unlikely to directly impact on farmers.

48. Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Yes.

Allowing landowners and managers to combine payments for Biodiversity units alongside other payments (with different or additional outcomes) would enable land managers to design projects to maximise the environmental gains and incentivise the development of schemes which offer multiple benefits. It also facilitates efficient land use and delivery of public goods as the industry goes through the Agricultural Transition period.

To enable stacking Defra will need to provide more confidence to the market around which activities are additional to publicly funded support. It is possible for one action to deliver multiple environmental outcomes. Will it really be the case the environmental land management schemes could pay for water quality improvements and BNG the biodiversity outcomes?

Further clarify is needed to understand how tax will operate on BNG sites and with BNG credits, especially alongside other environmental activities/payments.

49. Are these proposals for statutory biodiversity credits sufficient to:

a. Ensure, when supported by suitable guidance, that they are only used by developers as a last resort? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Other. The proposals for the guidance seem sensible. Without seeing the guidance it's hard to comment yes/no.

The NFU understands the rationale behind the proposals that credits are priced at a premium compared to biodiversity units on the open market, however, the option to purchase credits and walk away rather than entering long-term land management commitments or contracts with third parties, will be seen as a benefit by some parties. The price needs to be carefully considered to ensure that it encourages local delivery of BNG in preference to purchasing credits, but at the same time that credits are affordable to those who need to make use of them.

b. Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

Do not know – who pays if a project fails (Q52)?

50. Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers? [Yes (please explain the alternatives and your reasoning) / No (please explain why not) / Other (please tell us more) / Do not know]

Do not know.

51. Do the principles for how we will set, and review credit price cover the relevant considerations? [Yes / No (if not, what further considerations should be included?) / Other (please tell us more) / Do not know]

Do not know - Insufficient detail in the consultation. For example, the consultation talks about covering the administrative costs and the costs of implementing net gain, it also talks about ensuring that the price isn't competitive compared to the market price for biodiversity units. All schemes will have administrative costs and costs associated with delivering BNG, so simple cost recovery may not make these units non-competitive, particularly when the advantage of being able to purchase credits and walk away, rather than having a long-term commitment to manage are factored in. So, how will the Government ensure that the credit price is non-competitive? Also, if there are fees for registering sites on the biodiversity gain register, what administrative costs will be included in the credit price?

52. Do you agree with the proposed principles for credit investment? [Yes / No (please explain why not) / Other (please tell us more) / Do not know]

No. The Government already has existing landscape schemes (e.g., Landscape Recovery), that could be used as a delivery mechanism rather than creating a new mechanism. If Landscape Recovery was used as a vehicle this funding should be treated as public money. The Landscape Recovery projects should still be required to attract private sector funding.

The NFU seeks further clarity on these proposals:

- Where does the management and accountability sit for credit investment?
- Will the money be private or public sector?

Any mechanism and resulting investments need to be transparent, with robust monitoring, evaluation, and reporting.

53. Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities? [Yes / No, not sufficient / No, overly burdensome or not achievable / No (please explain why not and suggest how could they be improved) / Do not know]

No.

The system needs to be proportionate and avoid unnecessary burdens on all parties. Frequency of monitoring and inspections will be very dependent on habitat type and how established the project is e.g., once established the risk of failure is reduced.

The proposals could be more prescriptive around how failures are managed. 'Enforcement action by the planning authority' seems quite broad. Would the 'failure' requirements be individual to each conservation covenant? As commented on earlier (Q34) the BNG metric builds in a multiplier to address the reality that we are dealing with nature and not all BNG/habitat creation will be successful. The monitoring and enforcement requirements need to accept habitat creation can fail, even with the most valiant attempts, whilst ensuring that there has been a genuine attempt to implement the relevant requirements. This means that inspections and monitoring need to focus on actions taken as well as outcomes achieved to ensure they are proportionate and deliverable for all involved. There also needs to be a mechanism in place to enable management activities to evolve if it becomes clear that the original proposals will not deliver the intended outcomes. The appropriate mechanisms need to be in place, it is not just about enforcement.

Data on the register will need to be inputted and managed carefully:

- It wouldn't be appropriate to publish all protected sites and species monitoring data
- Once a BNG contract is over do these sites get removed from the register?

54. Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring? [Yes (please explain why this would help) / No (please explain why this would not help) / Do not know]

Do not know/NA.

55. Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable? [Yes / Yes, but not sufficient / Yes, but not achievable / No (if not, how could they be improved?) / Do not know]

Do not know/NA.

56. Considering the data requirements set out above and in greater detail in Annex C:

a. is there any additional data that you think should be included in the Biodiversity Reports? [Yes (please describe the data and explain the reasons for your view) / No / Do not know]

Do not know/NA.

b. is there any data included here that should not be required as part of the Biodiversity Reports? [Yes (please describe the data and explain the reasons for your view) / No / Do not know]

Do not know/NA.