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NFU consultation response - Biodiversity net gain: updating planning requirements (Defra open consultation)

Executive Summary

The NFU represents 55,000 members in England and Wales involved in 46,000 farming businesses. In addition, we have 25,000 countryside members with an interest in the countryside and rural affairs.

Our trade association is the largest farming organisation in the UK, providing a strong and respected voice for the industry and employing hundreds of staff to support the needs of NFU members locally, nationally and internationally. We work with government departments across government, including agriculture, rural affairs, environment, energy, climate change, science, business, employment and transport issues. Our aim is to direct policy into real economic opportunities for farming, rural diversification and job creation. The NFU champions British agriculture and horticulture, to campaign for a profitable and sustainable future for our farmers and growers.

With 71 per cent of UK land area in the agricultural sector, NFU members represent the bedrock of the rural economy, with a diverse range of business interests in addition to food production. Our vision is for farming to grow and create wealth through a wide variety of goods and services for the UK economy, centred upon but not limited to food production.

- **Biodiversity net gain should not be mandatory for all developments.** Each proposal needs to be judged on its own site specific merits. The National Planning Policy Framework (NPPF; Para. 170) only states that planning policies 'should' use measures to contribute and enhance the natural and local environment, it does not state that they 'must'. In terms of the delivery of net gain, we believe that consideration should be given to the existing Community Infrastructure Levy (CIL) contributions as opposed to making it a separate requirement as there is potential to cause confusion. Furthermore, in the longer term new approaches need to be found that increasingly complement, but may also need to co-exist alongside, government's proposed Environment Land Management Schemes (ELMS).
- **We believe that all agricultural developments should be exempted on the basis that they are usually low impact and required for the efficient functioning of an agricultural business.** In addition, developments not requiring a Schedule 1 or 2 Environmental Impact Assessment (EIA), agricultural developments and developments that fall under a Local Development Order (LDO) and Rural Exemption Sites should be exempt. Also Rural Exception Sites for housing development need to be exempt due to

the impact this could have on bringing such sites to the market. We also believe that any projects that don't need to go through the planning permission process should be exempt from biodiversity net gain. House extensions, small sites and all brownfield sites should also be exempt from biodiversity net gain on the basis they will be difficult to monitor as well as also having a low impact on biodiversity in general.

- **We have concerns about the proposal to bring local sites within the scope of the net gain policy because they are not comparable to international and national protected sites, to which a clear legal framework applies.** The procedure for the designation of local sites varies considerably across England and their quality varies considerably. Therefore, we believe that it would not be appropriate for this to be included in the Defra net gain metric.
- **The NFU welcomes initiatives to streamline the protected species licencing regime.** In the case of the great crested newt the approach has been trialled in the South East. It would be good to learn from that trial before it becomes a statutory requirement for all Local Authorities. An understanding needs to be gained as to whether the approach has delivered results to demonstrate population improvements. The NFU supports the district level approach to European Protected Species (EPS) licensing, considering EPS at a population level rather than by individual animal or plant. However, it has been developed to address a specific issue for a species (great crested newt (GCN)) that is, and will continue to be, protected. It is important that we learn from the initial trials of the GCN district licensing approach before we seek to extend it to other species. We also need to understand and ensure that this does not lead to double counting.
- **There is a need to take in to account developments delivering wider environmental ambitions.** However, we have concerns regarding extending the net gain concept to wider environmental gain due to a potential risk of double counting. Only once a fully functioning, deliverable net gain policy exists should consideration be given to extending it to other environmental outcomes or natural capital impacts.
- **Biodiversity is notoriously difficult to assess using natural capital approaches and to value objectively.** While we believe that, the metric is a good attempt at developing a comparable framework for assessing widespread species and typical habitats, more information is required on the basis for the designated weightings. We believe that the tool would only be suitable to be used as an indicative guide to help simplify and speed up assessment. There also needs supporting guidance to help assessors make decisions on habitat classification (distinctiveness in the metric) and condition. Without suitable guidance, determining the difference between 19 classifications of grassland in UKHABs (UK habitat classification system) may not be that straightforward.
- **Each site must be judged on its individual merits as opposed to having a blanket approach applied** when assessing whether a mandatory 10% increase in biodiversity units is at the right level. Regard must be given to the fact that biodiversity net gain will affect rural sites far more than brownfield and urban sites and as such places the rural economy at an immediate disadvantage.
- **The NFU would support developers being able to pay through the tariff mechanism without exhausting on-site and local compensation opportunities.** This would allow for more efficient delivery of the scheme in comparison to fully exhausting options on-site. As stated in the consultation impact assessment, significant economies of scale can be achieved with larger scale habitat restoration and recreation with costs being halved when scaling up from a 100 hectare project to a 250 hectare project. The tariff mechanism will assist large rural developments where there is a landlord / tenant arrangement. The tenant may want to improve buildings, but the landlord does not want to commit land to long term environmental delivery through net gain. In these circumstances a tariff may enable building improvements.
- **Application of the metric must be consistent across local authorities and assessors should have some form of accreditation to assure quality and consistency across the country.** Our initial thoughts are this

should not be a new accreditation. There are a number of existing accreditations that could be adapted to meet the requirements of biodiversity offsetting, for example, certification through the Society of the Environment.

- **We have considerable concerns about the establishment of a baseline map for broad habitats.** Any such mapping could not possibly accurately reflect existing habitat and certainly could not accurately record changes which naturally occur in any dynamic environment, for example due to crop rotations, environmental land management.
- **Any new system should seek to work with farmers to ensure farmers maintain a choice as to how they farm and develop their land and appropriately compensate those who seek to provide land for other uses that would bring about an overall environmental gain.** The proposed baseline appears to be more about managing a perceived risk over actually providing a national tool that Government could use, the risk being of intentional degradation of habitat before a development. Current habitat mapping will not include all the types that the net gain policy extends to. As a result, we believe the proposed baseline does not appear to be the right solution.
- **There is a risk that this policy will prevent habitat improvement outside of net gain delivery, with the policy itself acting as a deterrent to wider environmental improvements.** Where Government policy encourages environmental improvements than those participating in such schemes should not be penalised by the metric. For example, should farmers be encouraged to plant forestry on green belt they should not subsequently be penalised through the biodiversity metric if they need to undertake development. Furthermore, normal farm business decisions around cropping on land should not be deemed intentional degradation of habitat. Farmers who are already delivering good environmental outputs should not be penalised by the way the metric is applied.
- **For the delivery of biodiversity outcomes, there is a need for simplification to the proposals where one map or plan can provide what is needed to support net gain delivery.** This needs to have a clear purpose. The metric only applies to biodiversity; for natural capital priorities to be included in the opportunity maps it would need to be relevant to the net gain policy.
- **To mandate net gain, there needs to be an adequate supply of biodiversity units and there must deliver a fair financial payment for the services provided.** Payments need to reflect and fairly reward farmers for the full costs of delivery and future losses. In addition there needs to be security for the provider in terms that funds will be available for the entire length of the contract. Payments need to offer an incentive and delivery needs to be achievable. There also needs to be established a recognised system or a register where environmental gain can be 'banked'. Also the duration of the net gain needs to reflect the type of habitat created, the length of the contract with the provider matched with financial reward. The minimum duration for the maintenance of created or enhanced habitats must be proportionate to the life expectancy of the development.
- **The NFU has concerns about the use of conservation covenants - they should not exist in perpetuity and should not bind successors in title.** They should be flexible as to the environmental outcomes and the site itself should not necessarily bind the landowner or provider into onerous, perpetual obligations.
- **We agree that the proposed tariff should cover the cost of replacing and maintaining lost habitats** whilst factoring in local cost pressures such as land prices as well as the delivery and monitoring costs of the compensation scheme. However, it is difficult to assess whether the proposed tariff range of £9,000 - £15,000 per biodiversity unit would cover these costs.
- **The tariff cost rate should be revaluated once the UK's trading, regulatory and domestic agricultural policy regime is ratified to ensure attractive payment rates in order to stimulate an active, scalable and sustainable biodiversity unit market.** Using a 30 year delivery period, 20% familiarisation and administrative costs and assuming no restrictions on land management post-delivery, the tariff cost range will need to be revised upwards or weighted towards the middle to higher end of the proposed

range to encourage uptake from farmers across all sectors and regions. Furthermore, it is our view that any tariff agreement must include a mechanism to index link future payments or provide top-up payments should biodiversity unit providers face significant inflationary pressures or new market conditions that deem delivery of the units uneconomical.

- **Tariff collection should favour a simplified approach that does not place extra burdens on small developers and any tariff revenue should not be used to compulsorily acquire areas of land on which to implement biodiversity net gain.** The process also needs to be consistent so that developers can anticipate what is required in advance.
- **Care needs to be taken in considering the scope for negative unintended consequences which may arise.** One such example could be in relation to tenant farmers whereby biodiversity net gain may not be able to be carried out on tenanted land as it would be in breach of clauses in tenancy agreements. As a result, consideration in relation to tenant farmers must be taken into account as they may be put at a disadvantage when it comes to delivery on site and may have no other option than to pay a tariff to deliver at greater cost.
- **Finally, greater clarity is required on disputes resolution.** For example, we can see potential for disputes arising over the assessment of habitats and in our view the current planning system may not present appropriate dispute resolution options to address this. We would want to see more clarity on how such situations will be resolved, although we anticipate this would depend on the detail of the agreement between the provider and the contracting party.



Key Principles

1. **The Government's consultation on delivering environmental net gain through the planning system needs to evolve into a practical and deliverable policy.** In the NFU's view:
 - Government must balance any future net gain policy with the use of land, a limited resource, for food production.
 - Net gain should not slow down the planning process for applicants or LPAs making planning decisions.
 - The policies put in place need to be practical to be deliverable and offer value for money to developers and government.
2. **The NFU supports the concept there is a need to recognise that biodiversity net gain but this should not be mandatory for all developments.** Each proposal must be judged on its own site specific merits. We believe that all agricultural developments should be exempted on the basis that they are usually low impact and required to effect efficient functioning of the business. We also believe that any projects that don't need to go through the planning permission, either because they are permitted development or allowed due to local planning policies (as is often the case with farm tracks), should be exempt from biodiversity net gain. Farmers should not have the additional costs of net gain imposed on their development when the development has wider environmental benefits, for carrying out their normal farming practices or the land is already delivering high environmental benefits: For example,
 - If a building is being put up to improve air quality or reduce risk of pollution then, at application, the applicant should not be expected to deliver as much biodiversity net gain
 - The development leads to improved energy efficiency;
 - Where land is in a normal crop rotation then it should be judged as arable land
 - Where land is part of an environment scheme.
3. **Farmers have the potential to deliver the net gain whether this is commissioned by the Local Planning Authority (LPA), the developer, a broker or through the tariff mechanism.** The farmer should have a choice of who to contract with. A monopoly situation of one broker must be avoided at all costs. If the contract arrangements are unfavourable then farmers will not step forward to be providers which will hinder the efficient operation of the market. Therefore the NFU proposes:
 - The brokers are accredited to ensure good standards are maintained.
 - There is a need for a register of net gains that enables farmers to record net gains and sell them at a later date or sell excess net gain delivery.
 - Defra sets out the minimum standards for the contract to ensure it is fair and balanced. The contract for delivering net gain needs to be clear what is being paid for (actions or outcomes) and how they are measured, provide financial security, flexibility to deal with unpredictable events and pass on the recognition in the metric that delivery is not always effective in the way any redress is managed.
 - The length of the contract will affect appetite by farmers to be involved. Farmers would need contracts less than 25 years proposed. Equally, the payments for delivery and maintenance need to match the length of the commitment, taking in to account the risk of permanent habitat creation.
 - Equally, if net gain delivery is to deliver a biodiversity outcome then it must be possible to sell the other environmental outcomes from the same site. For example with the creation of salt marsh it must be possible to sell the carbon storage that is delivered alongside.
 - From the outset it must be clear how delivering net gain relates to other environmental and CAP schemes, including future environmental land management schemes.
 - Deciding whether to be a net gain provider should be voluntary.
 - It should be possible for tenants to be able to supply net gain.

Answers to the consultation questions

What development should be in scope of a net gain policy?

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

Biodiversity net gain should not be mandatory for all developments. The National Planning Policy Framework (NPPF) (Paragraph 170) only states that planning policies 'should' use measures to contribute and enhance the natural and local environment, it does not state that they 'must'. A reason for this is that each site / development proposal must be judged on its own site specific merits.

Recommendation. Biodiversity net gain should not be mandatory for all developments; each proposal must be judged on its own site specific merits.

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

Government could consider supporting the delivery of biodiversity through the already existing CIL contributions as opposed to making it a separate requirement. Many local authorities collect CIL contributions in accordance with their charging scheme yet do not end up spending it. Government could perhaps consider making unspent collections that are not earmarked for other projects to be used to develop biodiversity areas. This would mean widening the scope of CIL to include biodiversity as a type of infrastructure.

Delivering gains for the broad environment, including biodiversity, is complex and multi-faceted. For example, a single species will need a varied habitat combined with food sources that meet their lifecycle needs. Providing one type of habitat means that another is lost. Biodiversity covers the variety of life across the world, going beyond the identified key species and habitats. Therefore, it is understandable that the solutions to achieving biodiversity net gain are many and varied. In seeking to achieve net gain the way it is measured, and delivered, has to account for the biodiversity found across the countryside.

The NFU recognises that in the longer term that new approaches need to be found that increasingly complement, but may also need to co-exist alongside, the Government's proposed environment land management schemes (ELMS). Renewables, Industry-led activity, Covenants, Biodiversity Offsetting, Natural Capital and Payments for Ecosystem Services, Carbon Credits and rewards through the supply chain are just a few examples of new markets or initiatives that have recently emerged and with further encouragement could continue to develop in future. These new approaches could be funded by the private or public sector, or a mixture of both.

Complementing ELMs delivery, industry-led activity can help address future environmental challenges, including net gain. Continued government support for these initiatives is critical. Farmers want to support the environment alongside their productive business. They don't always want to be part of a formal scheme or are unable to access a scheme due to various constraints, but they do want to be acknowledged for their work supporting the wider environment and providing public goods. Farmers need access to the best advice that suits their local conditions or farming systems. Industry-led initiatives such as the Championing the Farmed Environment (CFE), the Voluntary Initiative (VI), the Greenhouse Gas Action Plan and Tried and Tested (T&T) encourage farmers to be more resource efficient, protect soil, water and improve biodiversity. These initiatives have brought together industry, environmental groups and the farm advisory community to develop agreed environmental messaging for farmers.

In addition there is a need to develop knowledge on how to best manage biodiversity to achieve the intended outcome. This needs to be available to in a user friendly format to enable effective delivery.

Recommendation. The Government could consider supporting the delivery of biodiversity through the already existing CIL contributions as opposed to making it a separate requirement. In the longer term new approaches need to be found that increasingly complement, but may also need to co-exist alongside, government's proposed environment land management schemes (ELMS). Complementing ELMs delivery, industry-led activity can help address future environmental challenges, including net gain.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

a. House extensions. House extensions should be exempt on the basis that they are usually permitted under general permitted development and even where not, are generally very small in scale and unlikely to result in any loss of biodiversity. It would also be a disproportionately expensive procedure for a house owner to undertake a survey to identify biodiversity in relation to the project.

b. Small sites. Small sites within the scope of the Town and Country Planning (Development Management Procedure) (England) Order 2015 should be exempt. These are typically sites of less than 1 hectare or where the development consists of a building/s having a floor space of less than 1000 square metres. Again, these types of development are unlikely to have any impact on biodiversity loss and the costs of producing a biodiversity net gain would be prohibitive and disproportionate to the level of development.

c. All brownfield sites. Brownfield sites should be exempt. As already developed land, there is likely to be no loss to biodiversity.

d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers). All brownfield sites should be exempt for the reason stated in c. above and not just those on brownfield registers since not all brownfield sites or previously developed land within the definition of the NPPF 2018 is required to be entered onto such a register. In fact it is only land over 0.25 hectares or suitable / available for residential development which is required to be entered. There will therefore be a lot of brownfield sites as defined by the NPPF 2018 which are not registerable.

It is also unclear whether the principle of 'environmental net gain' replaces biodiversity offsetting or runs alongside it. Greater clarity is needed. There has been limited experience of the use of the concept of biodiversity offsetting, but we would recommend learning any lessons from the biodiversity offsetting pilot areas and other experiences of using the approach, before extending to a much more complex concept of 'environmental net gain'.

Recommendation. Categories of development listed as a – d above should be exempt from biodiversity net gain on the basis they will be difficult to monitor as well as having a low impact on biodiversity in general.

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

We believe that all agricultural developments should be exempted on the basis that they are usually low impact and required for the efficient functioning of an agricultural business. The footprint of agricultural buildings tends to be largely disproportionate to their return on revenue due to the nature of agricultural operations. It is an added cost and once the application fee, Community Infrastructure Levy (CIL) and the cost of development are taken into account, the further cost of assessment and providing an area to cater for biodiversity net gain would make it unviable and perhaps disproportionate to the value of the development to the business. If a farm business has already moved to introduce 'environmental net gain' through land

management and farming operations, these should be acknowledged in any assessment for future planning development. For example:

- Agricultural businesses sometimes require new development to comply with new regulation which is already designed to deliver environmental gains such as animal welfare or prevention of water pollution e.g. Clean Air Strategy. To require developments in such circumstance to also comply with additional biodiversity net gain requirements would be an added burden on top of an already potentially costly project simply to adhere with regulation would be unjust.
- Consideration should also be given to sites which already host and deliver a number of voluntary biodiversity initiatives or which already exist nearby such as agri-environmental schemes. If these are in operation then there may be little reason to enforce further measures in return for permission to develop a site. To do otherwise would be to penalise those farmers for proactively delivering environmental gains.
- Achieving 'net environmental gain' should not just be about creating additional habitat on site or as a process to offsetting the impacts of new housing and infrastructure. If it is to be applied to farm projects, for example for new buildings and operations, then the environmental gain to be achieved, such as improved energy efficiency, also need to be appropriately valued.

Other exemptions should include:

- Developments not requiring a Schedule 1 or 2 Environmental Impact Assessment (EIA) regulations as these developments are likely to be relatively small scale and would only produce minor areas of biodiversity net gain.
- Buildings / developments required to meet regulatory standards such as to comply with animal welfare or pollution control. It would be unfair to add to cost in situations where the cost of development is already perhaps prohibitive to a business but the development is required to enable lawful business continuity.
- Agricultural developments tend to be low impact. As well, these buildings are often required to be large in scale although the return on capital is often low in comparison.
- Developments which fall under a Local Development Order (LDO) as these tend to be small scale minor developments.
- Developments where the footprint will not exceed 1,000 square metres. This would capture agricultural development which does not fall under permitted development for some reason but is still in line with agricultural permitted development sizes. Examples of this could be where permitted development does not apply because the site is too close to a road or in a National Park etc. The rationale for exemption is that the effect on biodiversity for such a development would be the same as an identical development that was exempt under the General Permitted Development Order (GPDO) on the basis that it was small scale. Basic examples of minor agricultural development for which planning permission may be required include replacing an area of hardstanding, erection of a modest livestock building, installation of slurry storage, livestock handling infrastructure.
- Developments which offer an alternative to biodiversity net gain for example renewable energy or something which is designed to improve air or water quality.
- Developments which are so important to the local economy but which cannot satisfy the BNG requirements should be exempt as well as being exempt from paying a tariff due to the requirements making the development unviable.
- Rural Exception Sites within the meaning of the NPPF 2018 definition. These are small sites used for affordable housing in perpetuity where sites would not normally be used for housing. Rural exception

sites seek to address the needs of the local community by accommodating households who are either current residents or have an existing family or employment connection. There is a big issue in relation to lack of available and affordable rural housing and bringing such development sites to the market needs to be encouraged. Because the purpose of such sites is to provide affordable housing, margins are already tight for developers and the requirement to carry out BNG would cause added expense and would discourage such development.

- Finally, any projects that don't need to go through the planning permission, either because they are permitted development or allowed due to local planning policies (as is often the case with farm tracks), should be exempt from biodiversity net gain. By definition, adding a new approach would not in itself be simple deliver or subsequently monitor. This exemption should apply to all local planning authorities – including for example National Park Authorities in order to retain consistency of approach.

Recommendation. We believe that all agricultural developments should be exempted on the basis that they are usually low impact and required for the efficient functioning of an agricultural business. We also believe the following should be exempted because they are generally small sites, minor developments or deliver other environmental or economic benefits, or where the cost of net gain would be prohibitive: Developments not requiring a Schedule 1 or 2 Environmental Impact Assessment (EIA), agricultural developments, developments that fall under a LDO and Rural Exemption Sites. Also Rural Exception Sites for housing development need to be exempt due to the impact this could have on bringing such sites to the market.

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

The final approach put in place must be deliverable. Any projects that don't need to go through the planning permission, either because they are permitted development or allowed due to local planning policies (as is often the case with farm tracks), should be exempt from biodiversity net gain. By definition, adding a new approach would not in itself be simple deliver or subsequently monitor. This exemption should apply to all local planning authorities – including for example National Park Authorities in order to retain consistency of approach.

Agricultural buildings not falling within any of the suggested exemptions above in answers 3 and 4. This could be for the larger types of agricultural building that exceed 1000 square metres or which fall into EIA Schedules 1 and 2. Typically this type of building will be large but will not have a large return on investment per square metre and meaning that a complex assessment for BNG could delay development as well as making it unviable.

Small businesses whose business is not development should be subject only to a simplified biodiversity assessment on the basis that it will be a one off development rather than a series of developments as their main business and so will not have an ecological / biodiversity process in place. In addition a development by a small business is likely to be relatively modest. Developers on the other hand are likely to already have processes in place as they deal with development on a daily basis. Larger non-development businesses are more likely to develop on a larger scale and perhaps more regular basis and will be able to budget for having a professional ecologist to undertake a full biodiversity survey.

Recommendation. Any projects that don't need to go through the planning permission process should be exempt from biodiversity net gain. Small businesses should be subject only to a simplified biodiversity assessment on the basis that it will be a one off development rather than a series of developments as their main business and so will not have an ecological / biodiversity process in place.

Biodiversity features in scope of net gain policy**6. 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?**

We have concerns about the proposal to bring local sites within the scope of the net gain policy. Local sites are not comparable to international and domestically protected sites, to which a clear legal framework applies. The procedure for the designation of local sites varies considerably across England and their quality varies considerably. Therefore, we believe that it would not be appropriate for this to be included in the metric. Adjustments to the Defra metric should not be made to reflect features which are simply deemed to be important locally, but which have not followed a rigorous and robust designation process.

The draft metric captures 'local features' under the heading 'Strategic Significance'. This goes further than proposing local sites identified by local partnerships as being of strategic significance. The metric suggests that the strategic significance should take in to account Nature Recovery Areas, local biodiversity plans, National Character Area (NCA) objectives and plans green infrastructure and biodiversity. Across the consultation there is no clarity about what will count as 'strategic significance'; who will make that decision; and what principles will guide that decision. This will lead to a lack of national consistency in the way the metric is applied.

The draft metric lists as sources of information for 'strategic significance' that may be out of date or inappropriate:

- Nature Recovery Areas – These are not defined
- NCA – These were published in 2014. The core data and descriptions of the landscape are constructive. However it has to be recognised in this context that the datasets underpinning them are dated. For example, it uses the agricultural census from 2009. Also, the NCAs include opportunities. These were not consulted on effectively bringing in to question whether they should be used to inform 'strategic significance' in this context.
- Local biodiversity plans – These need to be sense checked to ensure they are up to date, based on robust evidence and relevant.

Recommendation. We have concerns about the proposal to bring local sites within the scope of the net gain policy because they are not comparable to international and national protected sites, to which a clear legal framework applies. The procedure for the designation of local sites varies considerably across England and their quality varies considerably. Therefore, we believe that it would not be appropriate for this to be included in the metric.

How are species treated within a net gain policy?**7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?**

The NFU welcomes initiatives to streamline the protected species licencing regime. In the case of the great crested newt the approach has been trialled in the South East. It would be good to learn from that trial before it becomes a statutory requirement for all Local Authorities. We need to understand whether the approach has delivered results to demonstrate population improvements. We need to understand the practical issues of implementing the policy. Do the Local Authorities have the required skills? Have they got the resources available, evidence required and guidance necessary to develop a strategic approach by 2020? How will this work be funded? What is the legal mechanism for securing compensatory habitat, should it not be protected through local planning policy?

Potentially farmers could be involved in the delivery of compensatory habitat. Therefore it is important that:

- Owners and land managers of land that could be used for compensatory habitat are engaged in discussion as early as possible. Farmers would be concerned to find local plans included their land for the provision of compensatory habitat without proper consultation.
- The legal and financial arrangements for delivering the compensatory habitat are clear.

The net gain policy is in addition to the existing requirements for protected species. It would be interesting to explore how, practically, the net gain policy works alongside the requirements for compensatory habitat for European Protected Species (EPS) and habitats. There needs to be an approach developed that does not lead to 'double counting' of the same habitat. In the case of great crested newts (GCN) the loss of a GCN pond could lead to it being replaced by two ponds under the EPS approach. The net gain policy needs to take a pragmatic approach to the loss of the GCN pond. It should not seek to create net gain in addition to the two new GCN ponds. Equally, taking a strategic approach to delivering compensatory habitat through the EPS district licensing should not lead to the net gain calculation applying a multiplier for spatial risk reflecting that location of delivery may not be 'local' to the site of biodiversity loss.

Recommendation. The NFU welcomes initiatives to streamline the protected species licencing regime. This approach has been trialled in the South East and we believe it would be good to learn from that trial before it becomes a statutory requirement for all Local Authorities.

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

The NFU supports the district level approach to European Protected Species (EPS) licensing, considering EPS at a population level rather than by individual animal or plant. The policies have the potential to improve populations of protected species and reduce costs, delays and uncertainties for developers, including farmers.

The approach was developed to address the impact of developments on great crested newts does have some merit. However, it has been developed to address a specific issue for a species that is, and will continue to be, protected. It is important that we learn from the initial trials of the GCN district licensing approach before we seek to extend it to other species. We also need to understand how this does not lead to double counting.

Recommendation. The NFU supports the district level approach to European Protected Species (EPS) licensing, considering EPS at a population level rather than by individual animal or plant. The policies have the potential to improve populations of protected species and reduce costs, delays and uncertainties for developers, including farmers. We also need to understand how this does not lead to double counting.

Ambitions for wider environmental net gain

9. 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.

There is a need to take in to account development delivering wider environmental ambitions. A farm business could be replacing a building to reduce air pollution or reduce the risk of pollution. Agricultural businesses sometimes require new development to comply with new regulation which is already designed to deliver environmental gains such as animal welfare or prevention of water pollution e.g. Clean Air Strategy. To require developments in such circumstance to also comply with additional biodiversity net gain requirements would be an added burden on top of an already potentially costly project.

We have concerns regarding extending the net gain concept to wider environmental gain due to a potential risk of double counting e.g. the development leads to the loss of a newt pond. The biodiversity metric measures the loss of the habitat i.e. the pond, leading to the need to replace the at least the number of lost biodiversity units lost, but there could be additional measures required for the newts.

Whilst it is right to set out a strategic ambition for future policy development, at this stage there needs to be a focus on delivery of the biodiversity net gain. There is much work to be done to achieve this. Therefore, only once biodiversity net gain is functioning as a deliverable policy should consideration be given to extending it to other environmental outcomes or natural capital impacts. Equally, in seeking to broaden the scope of net gain policy there will be a need for detailed consultation to understand the interplay with existing legal requirements and environmental licensing or permitting regimes.

Government must balance any future net gain policy with the use of land, a limited resource, for food production.

Recommendation. There is a need to take in to account development delivering wider environmental ambitions. However, we have concerns regarding extending the net gain concept to wider environmental gain due to a potential risk of double counting. Only once a fully functioning, deliverable net gain policy exists should consideration be given to extending it to other environmental outcomes or natural capital impacts.

Measuring biodiversity – a biodiversity metric

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

Biodiversity is notoriously difficult to assess using natural capital approaches and to value objectively. In this respect, the metric is a good attempt at developing a comparable framework for assessing widespread species and typical habitats.

The metric in itself appears to provide a reasonable framework for assessment of habitats (as a proxy indicator for biodiversity), but it is **not clear how the scores assigned to assess distinctiveness, condition, location and connectivity of habitats have been arrived at** and therefore more information is required on the basis for the designated weightings. The same is true for the multipliers assigned to the risks of non-delivery around the two areas of difficulty and spatial risk. For example, a fairly poor habitat condition achieves a score of 1.5 whilst a site of high connectivity achieves a score of 1.15. This would suggest that a fairly poor condition habitat is valued materially greater than habitat being in a place of high connectivity or a place of high strategic significance which appears counterintuitive and therefore more evidence to support the allocated scoring is required.

During the Defra Metric webinar it was stated that many of the risk multipliers are value judgements based on primary and secondary research conducted. This illustrates the ultimately subjective foundation to an approach which is being presented as objective through the use of a quantifiable biodiversity unit output. Whilst the NFU believes there is value in this approach, the subjective assumptions underpinning the tool must be more explicitly stated in order to allow a more transparent assessment and to promote the feedback – improvement loop for subsequent versions of the metric. In this respect, while many of the multipliers may be based on value judgements, the core influential sources of data which underpin such judgements should be clearly stated to allow sufficient interrogation and informed feedback.

Whilst reviewing the beta version of the biodiversity metric tool, it is unclear whether the ‘difficulty of creation’ multiplier will be applied to the supplier of the biodiversity unit such as a farmer in order to manage the risk of non-delivery. The current version of the model assigns a difficulty of creation multiplier based on the habitat type with no scope for adjustment. The NFU would recommend that the assessor is able to adjust the multiplier within reasonable bands to account for local growing conditions. This is because the difficulty of creation will be variable depending on local ecological and agronomic conditions and an overly prescriptive multiplier may

significantly discount the payment per hectare a farmer can achieve in turn preventing otherwise viable and efficient habitat delivery projects from being adopted. This is particularly the case for the medium to high difficulty multipliers which at 0.67 and 0.33 respectively would significantly alter the economics of a project. In contrast, the temporal risk discount rate of 3.5% is taken from the Green Book in line with well-defined Treasury guidelines.

We believe that the tool would only be suitable to be used as an indicative guide to help simplify and speed up assessment. This is because of the degree of subjectivity still involved in classifying the quality measures and risk factors underlying the biodiversity units generated for a site. We also believe that it will still be necessary to use other contextual evidence alongside the tool in order for this approach to be suitably robust. An example is where a development may deliver significant improvements in environmental performance in areas such as resource efficiency such as water and energy use. Here the trade-off between negative biodiversity impacts and positive environmental outcomes must be weighed up when considering the merits of an agricultural development.

Whilst there is ambition to develop a more holistic approach with Environmental Net Gain which incorporates a broader range of ecosystem services, the tool in its current form is limited to biodiversity benefits. The NFU believes that there must be scope to adjust the biodiversity unit scoring through professional assessment in order to reflect broader environmental trade-offs. An example is where a commercial or industrial enterprise upgrades their development to comply with requirements in line with the Clean Air Strategy. Such a development may then be required to provide biodiversity net gain. The accumulation of requirements under emerging environmental regulation would adversely impact the viability of such developments. In addition, in order to minimise the level of subjectivity amongst assessors we would advise that assessors must be specifically trained and accredited for the use of the metric.

It is also not clear how scarce and protected species will be treated for net gain as these are out of scope for the metric. More clarity is required on how these will be treated in a net gain approach.

Recommendation. The metric in itself appears to provide a reasonable framework for assessment of habitats but it is not clear how the scores assigned to assess distinctiveness, condition, location and connectivity of habitats have been arrived at and therefore more information is required on the basis for the designated weightings. We believe that the tool would only be suitable to be used as an indicative guide to help simplify and speed up assessment.

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

Beyond the metric there needs supporting guidance to help assessors make decisions on habitat classification (distinctiveness in the metric) and condition. Determining the difference between 19 classifications of grassland in UKHABs (UK habitat classification system) may not be that straightforward. Then UKHAB provides no guidance on how to access condition. Without suitable guidance it makes these two elements of the metric very subjective and will remove the ability to have a policy that works consistently across the country. Equally, it will lead to disputes between the developer and LPA undermining the perceived benefits of net gain.

Recommendation. There needs supporting guidance to help assessors make decisions on habitat classification (distinctiveness in the metric) and condition. Determining the difference between 19 classifications of grassland in UKHABs (UK habitat classification system) may not be that straightforward. Without suitable guidance it makes these two elements of the metric very subjective and will remove the ability to have a policy that works consistently across the country.

How much 'gain'

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

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Each site must be judged on its individual merits as opposed to having a blanket approach applied. Regard must be given to the fact that BNG will affect rural sites far more than brownfield and urban sites and as such places the rural economy at an immediate disadvantage. Defra's policy on rural proofing states that implementation of policies in rural areas may need to be delivered differently to urban areas.

One of the problems that the NFU has encountered in relation to infrastructure projects when biodiversity offsetting is the amount of extra land that is required to offset. An example of this can be seen in HS2 where an area of 7 hectares of ancient woodland was identified as being lost to the project. The mitigation for this was to plant a 35 hectare area of woodland. Land, especially land capable of hosting BNG is scarce which will mean that if a 10% gain is expected on many developments it will become even scarcer. This will drive up agricultural land prices for farmers and therefore food production prices. This issue will be even more pressing in the event that the developer is able to acquire land for BNG under compulsory purchase.

Consideration must also be given to agri-environment schemes already in place which have increased levels of biodiversity in the area.

Recommendation. Each site must be judged on its individual merits as opposed to having a blanket approach applied. Regard must be given to the fact that biodiversity net gain will affect rural sites far more than brownfield and urban sites and as such places the rural economy at an immediate disadvantage.

Mitigation hierarchy

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

The NFU would support such payment through the tariff mechanism as this would allow for more efficient delivery of the scheme in comparison to fully exhausting options on-site. As stated in the consultation impact assessment, significant economies of scale can be achieved with larger scale habitat restoration and recreation with costs being halved when scaling up from a 100 hectare project to a 250 hectare project. The same would be true for smaller scale farmer delivered projects when compared to localised urban projects as farmers are highly skilled land managers, experienced in delivering habitat improvements through agri-environment schemes and as such are able to deliver habitat creation projects with greater efficiency. One key driver behind such efficiency is the farmers' unique ability to leverage existing resources and knowledge to deliver habitat creation. A key benefit of enabling tariff payments would be the creation of less fragmented habitats, whereby space limitations in developments would lead to smaller areas of habitat creation which would require higher maintenance in comparison to larger scale habitat creation located off-site. In addition, working with habitat brokers and through a more concentrated delivery pool, the monitoring and evaluation costs would be significantly decreased in turn reducing delivery costs. As such, the NFU is of the view that farmers could play a key role in delivering biodiversity units sourced through the tariff mechanism.

The tariff mechanism will assist large rural developments where there is a landlord tenant arrangement. The tenant may want to improve buildings, but the landlord does not want to commit land to long term environmental delivery through net gain. In these circumstances a tariff may enable building improvements.

Equally, large poultry or horticulture projects may not have available land to mitigate on site. A tariff offers a way forward for these units.

There may be areas where, because the land is already highly distinctive, it is not possible to deliver on site, for example, small developments in upland National Parks. In these circumstances a tariff may be the only way to discharge the net gain requirements.

Recommendation. The NFU supports the use of the tariff mechanism to facilitate more efficient and higher quality habitat creation off-site.

Spatial preference**14. Would this be an appropriate approach to directing the location of new habitat?**

The metric provides for recognition of spatial significance. As outlined in our answer to question 6 we have concerns about local sites and features being included in the metric. Also, it's not clear how the proposed baseline relates to spatial preference. Our concerns about the baseline are set out in answer to question 16 below.

The consultation suggests that a local plan or strategy guides where the net gain should be delivered, where the tariff is not applied. There is much work to be done to define the role and purpose of such plans before they can be used to inform net gain. It is not clear who writes the local plan or strategy or whether the view is that such a plan exists e.g. for example under the NPPF. It is not clear what detail the plan needs to include for it to inform the 'spatial significance' element of the metric. Without this guidance it makes the 'strategic spatial significance categories' very subjective. How is local defined? Does the plan have a role in directing the use of the tariff?

Recommendation. There is much work to be done to define the role and purpose of such plans before they can be used to inform net gain.

Assessment of habitat type**15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?**

Application of the metric must be consistent across local authorities.

In most cases the assessment of the requirements for biodiversity offsetting will be to support a planning application. Therefore the Local Planning Authority (LPA) will need to be confident of the quality of the assessment, as they will be basing their decisions on that assessment. Ultimately, it does mean that the Planning Authority will be responsible for the robustness of the assessment.

It is not clear whether it's the LPA or the developer who undertakes the assessment and it could be different across the country. For smaller developments, that may not be required to submit an environmental report to support a planning application, the requirement to assess biodiversity before and after development will be an added cost. Government needs to factor these additional costs for businesses in to its policy development.

Assessors may also be required to assess/ monitor the offset provision. In a monitoring context, they would need wider expertise to advise on environmental improvements to the offset. In this scenario it is more appropriate to have some form of offset accreditation linked to other skills, even if the LPA is involved in this process.

Assessors should have some form of accreditation to assure quality and consistency across the country. Our initial thoughts are this should not be a new accreditation. There are a number of existing accreditations that could be adapted to meet the requirements of biodiversity offsetting, for example, certification through the Society of the Environment.

There is also a need to accredit the broker/ intermediary. They could potentially play a number of different roles, including identifying and sourcing suitable land, 'banking' the funds from the developer but also monitoring the progress and success of offsetting schemes. Given the different but important roles a broker may play, and to assure quality and consistency, it should have to be shown to be accredited (to standards in an appropriate scheme) and independently audited. A monopoly situation, where only one broker exists, must be avoided at all costs.

The consultation suggests the use of new technologies, such as remote sensing, to assess habitat present on a site. Experience with the Rural Payments Agency's rural land register is that satellite assessment is problematic, for example in 2017 RPA used this technology to map hedges. This placed hedges above the tree line, where

they were clearly not present. The technology needs to be far more robust than it currently is, particularly if it is to identify a myriad of habitats. For example the UKHAB definitions include 19 grassland habitats which would be difficult to distinguish from an aerial photo. Also, it needs to be far clearer what the purpose of collecting this data. Is it to inform the local plans and strategies or to assist the assessor in some way?

Recommendation. Application of the metric must be consistent across local authorities. Assessors should have some form of accreditation to assure quality and consistency across the country. Our initial thoughts are this should not be a new accreditation. There are a number of existing accreditations that could be adapted to meet the requirements of biodiversity offsetting, for example, certification through the Society of the Environment.

Baseline

16. Should a baseline map of broad habitats be developed?

We have considerable concerns about the establishment of a baseline map for broad habitats. Any such mapping could not possibly accurately reflect existing habitat and certainly could not accurately record changes which naturally occur in any dynamic environment, for example due to crop rotations, environmental land management.

Any new system should seek to work with farmers to ensure farmers maintain a choice as to how they farm and develop their land and appropriately compensate those who seek to provide land for other uses that would bring about an overall environmental gain. We are concerned from the consultation that the assessment of where new habitat is created does not appear to take in to account the existing significant strategic value of agricultural land - economically, socially and environmentally. The best and most valuable agricultural land for example is not only an environmental asset, because of the quality of the natural resource, but also a public asset that can enable efficient food production for the wider public good. Farmers, both as tenants and landowners, have also seen land they farm being allocated in development plans (including neighbourhood plans) for green space and public infrastructure without their consent.

The consultation presents the baseline as a national tool without articulating how it could be used in that context. There are a number of tools that already provide a baseline and outline targets that should be explored in the first instance. For example, [magic on gov.uk](https://magic.gov.uk) hosts the target information for Countryside Stewardship. The NCAs describe the habitats present. These could be used to measure change over time. However, it will not measure change generated by the net gain policy alone.

It is not clear how the baseline relates to local plans and spatial preference within the metric. Please see our answers to question 6 on local plans and 14 on spatial preference.

Recommendation. We have considerable concerns about the establishment of a baseline map for broad habitats. Any such mapping could not possibly accurately reflect existing habitat and certainly could not accurately record changes which naturally occur in any dynamic environment. Any new system should seek to work with farmers to ensure farmers maintain a choice as to how they farm and develop their land and appropriately compensate those who seek to provide land for other uses that would bring about an overall environmental gain.

17. 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?**

The proposed baseline appears to be more about managing a perceived risk over actually providing a national tool that Government could use, the risk being of intentional degradation of habitat before a development. The actions put in place to manage the risk need to be proportionate. Current habitat mapping will not include all the types that the net gain policy extends to. Mapping all habitat types at a national level seems disproportionate and costly compared to the actual risk. The technologies available to undertake national habitat mapping of this type may not be developed enough. The baseline for the metric to calculate net gain requirements is provided by the assessment of biodiversity present before a development starts. It is not clear how a national baseline contributes to this. Therefore, we conclude using a national baseline for all developments is inappropriate.

We understand the need to have a starting point for the calculation of the baseline used in the metric where there has been intentional habitat degradation. Clearly that starting point for an alternate baseline must only be used where it is proven that has been intentional degradation. To have it apply to suspected cases will lead to multiple disputes.

Defra need to develop a more practical method of working the starting point out. It is clear this would need to be based on historical evidence. It should not be acceptable for that evidence to be decades old. It needs to be recent and applicable to the location.

Recommendation. There needs to be a proportionate approach developed to managing the potential risk of intentional habitat degradation. The proposed baseline does not appear to be the right solution.

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

There is a risk that this policy will prevent habitat improvement outside of net gain delivery: The policy itself acting as a deterrent to wider environmental improvements. Where Government policy encourages environmental improvements then those participating in such schemes should not be penalised by the metric. For example, should farmers be encouraged to plant forestry on green belt they should not subsequently be penalised through the biodiversity metric if they need to undertake development.

Please also see our answer to question 19 below.

Recommendation. There is a risk that this policy will prevent habitat improvement outside of net gain delivery: The policy itself acting as a deterrent to wider environmental improvements.

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

There is a need to recognise that the habitat classifications could be used to infer that farmers are intentionally degrading habitat when they are in fact going about their normal business. Normal farm business decisions around cropping on land should not be deemed intentional degradation of habitat.

With farmland there is a practical issue with the habitat classifications that feed in to the distinctiveness element of the metric. It is normal practice, contributing to better soil health, to have a rotation of crops across the years. This could consist of arable crops interspersed with temporary grassland. However, grassland has a higher distinctiveness score than crop land. Where a farmer is undertaking his normal rotation he could be perceived to downgrade his distinctiveness score deliberately. This is unacceptable. The metric must not penalise normal farm rotations when the land is going for development.

The distinctiveness score puts a high weighting on temporary habitats such as arable field margins. By doing this the metric is penalising farmers for participating in agri-environment schemes or undertaking voluntary environmental delivery. Farmers who are already delivering good environmental outputs should not be penalised by the way the metric is applied.

Recommendation. Normal farm business decisions around cropping on land should not be deemed intentional degradation of habitat. Farmers who are already delivering good environmental outputs should not be penalised by the way the metric is applied.

Delivering biodiversity outcomes – how should biodiversity priorities be identified?

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

Through the consultation local plans or habitat maps have been mentioned several times. The habitat opportunity maps are the fourth type of map or plan referenced. There is clearly a need for simplification to the proposals where one map or plan can provide what is needed to support net gain delivery. It needs to be explored whether existing maps or plans deliver what is required before creating the burden and costs of developing new maps. Requiring more than one map or plan without clear purpose will lead to duplication of effort and confusion over which applies in what circumstance within the policy.

Our views outlined in answer to questions 6, 14 and 16 are just as relevant here.

Recommendation. There is a need for simplification to the proposals where one map or plan can provide what is needed to support net gain delivery. This needs to have a clear purpose.

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

The inclusion of natural capital priorities in habitat opportunity maps would extend the concept of biodiversity net gain to wider environmental net gain. However, the metric for calculating net gain is totally focussed on biodiversity net gain. For example, it does not measure soil quality (a natural resource) or include measures directly relevant to improving soil quality. Our answer to question 9 is just as relevant here. Therefore, asking for the inclusion of natural capital adds unnecessary additional work.

Recommendation. For natural capital priorities to be included in the opportunity maps it would need to be relevant to the net gain policy. However, the metric only applies to biodiversity.

Provision of compensatory habitats

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

For the market to function effectively there needs to be an adequate supply of biodiversity units. As the consultation highlights there are a number of ways the biodiversity units could be sourced. The developer could use one of his own sites or enter an agreement directly with a landowner. The developer could choose to go through a broker or a habitat bank entering in to an agreement with a land manager. However, the net gain is commissioned getting the delivery on the ground by land managers is fundamental.

The elements that will make delivery of net gain a market opportunity for providers are:

- It must deliver a fair financial payment for the services provided. Financial payments offered also need to reflect and fairly reward farmers for the full costs of delivery as well as future losses. For example, a permanent land use change from arable production to wet grassland could be completed through a 10 year agreement. It would require payments for all capital works together with annual management costs and recognition of the permanent land use change.
- There needs to be security for the provider, to ensure that funds are available for the entire length of the contract. The financial arrangements need to cover all eventualities including the fund holder/ intermediary becoming bankrupt / insolvent. In these circumstances either the funds must remain available for the provider for the duration of the agreement or the provider must be able to terminate the agreement.
- Farmers would be willing to participate provided it is voluntary, the obligations set out are achievable, are flexible to respond to the challenges thrown up by the natural environment and recognise and respond to the needs of the farming business, such as future modification, but also termination. To achieve this there needs to be a fair and balanced contract, with clear on-going contract management until the end of the contract.
- The contracts need to be clear how success is measured and, where there are potential failures, how these will be addressed.
- It must be clear who carries out the monitoring and report to the relevant authority .e.g. the LPA or Defra depending on the delivery model chosen. Also, who is responsible if the net gain commitment from the original development is not met.
- In addition to the biodiversity net gain farmers should be able to gain reward for a range of benefits delivered such as carbon sequestration from the same area of land, even if the funding comes from different sources.
- It must be transparent from the outset how delivering net gain relates to existing or future environmental land management schemes, including the current Common Agricultural Policy delivery through the Basic Payment Scheme.



- Administrative costs should be minimised to ensure that funding can be directed towards farmers undertaking the environmental delivery.
- The metric acknowledges that creation and restoration of habitat can be difficult and not always successful. The contract with the net gain provider must acknowledge this and not expect 100% delivery. It would be unreasonable to have contracts similar to the current Countryside Stewardship arrangements where penalties are triggered for failures on evidence, record keeping or delivery regardless of impact.
- Contracts of more than 20 years are unlikely to be adopted. This is because farmers want to retain future flexibility for land use to respond to the markets. Such long agreements would be a constraint on future generations who should make their own decisions on how to manage the land.
- In addition there is a need to develop knowledge on how to best manage biodiversity to achieve the intended outcome. This needs to be available to in a user friendly format to enable effective delivery. In the contract it needs to be clear who is responsible for providing the most appropriate advice for successful delivery.

Land tenure could present a problem for those with tenancies interesting in providing net gain or with a landlord who is considering entering in to a net gain agreement (in which case the sitting tenant should have protection against eviction, or full compensation, for the land taken). This issue needs to be addressed to find appropriate solutions for both parties. It will also increase the land available for net gain as at least 30% of land is farmed under a tenancy.

The consultation suggests that habitat providers should be accredited. In our view this would limit net gain provision. Farmers can deliver what is required given the correct advice and support. We would suggest that Defra sets out minimum standards that the contract with the land manager covers. This would give certainty to provider that the contract s fair and reasonable.

There is also a need to accredit the broker/ intermediary. They could potentially play a number of different roles, including identifying and sourcing suitable land, 'banking' the funds from the developer but also monitoring the progress and success of offsetting schemes. Given the different but important roles a broker may play, and to assure quality and consistency, it should have to be shown to be accredited (to standards in an appropriate scheme) and independently audited. A monopoly situation, where only one broker exists, must be avoided at all costs.

Recommendation. Defra sets out minimum standards that the contract with the land manager, as net gain providers, covers. Farmers would become net gain providers if the offer was balanced and fair. Payments need to offer an incentive and delivery needs to be achievable.

23. What further measures would help to ensure that the market provides:

- a. Sufficient biodiversity units for development?
- b. Cost-effective biodiversity units?

There is a need to establish a recognised system or a register where environmental gain can be 'banked'. Who should hold that register needs to align with other policy decisions regarding net gain. The register would need to be available to LPA, broker and developers alike. There are two examples where this would be relevant to farmers.

A farmer could be creating net gain in advance of a development. For example taking arable land and converting it to salt marsh by breaching a sea wall. For this to count to net gain the farmer needs to be able to register that change in habitat provision.

Alternatively a farmer could create more net gain than he was contracted to deliver. In that case he should be able to sell the additional units on the open market.

Recommendation. There is a need to establish a recognised system or a register where environmental gain can be 'banked'.

Legacy

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

In our view, any duration needs to be proportionate to the life expectancy of the development. The vast majority of farm buildings have a lower lifespan compared to residential or other development. The duration should also reflect the habitat type. For example arable field margins have a high distinctiveness score but are short term habitats, some needing replacing every two to three years. Equally the payments must match the length of the agreement to deliver the net gain. It would be unreasonable to expect on-going maintenance to be carried out without the costs of maintenance being covered.

The proposal to transfer land to a land trust is unacceptable. In many cases it will be a barrier to participation. The land owner should choose whether to sell land or not. A Land trust approach may be acceptable to a few. What is important is that the contracts are set up appropriately and fairly for the net gain deliverer.

Recommendation. The duration of the net gain needs to reflect the type of habitat created, the length of the contract with the provider matched with financial reward.

25. 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

In our view, any duration needs to be proportionate to the life expectancy of the development. The vast majority of farm buildings have a lower lifespan compared to residential or other development.

In principle, the proposed tariff mechanism could provide an opportunity for farmers to diversify their income through attracting private investment to deliver habitats. However, the aspiration to secure permanent habitat change for at least for the lifetime of the development (25-30 years) would make this an unattractive proposition for many farmers unless significantly favourable prices are offered for delivery. In this respect, a minimum duration of less than 25 years would be needed encourage greater uptake than the other longer options on offer.

The NFU is opposed to any requirement, agreement or covenant that exists in perpetuity (see answer to question 26 below). Longer term, and perpetual arrangements are likely to be off-putting to our members – to bind their land into a particular type of management or land use for significant periods of time, over what may be many generations, is a significant undertaking which may not suit their circumstances.

Recommendation. The minimum duration for the maintenance of created or enhanced habitats must be proportionate to the life expectancy of the development. The vast majority of farm buildings have a lower lifespan compared to residential or other development. The NFU is also opposed to any requirement, agreement or covenant that exists in perpetuity.

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

The NFU has concerns about the use of conservation covenants; they should not exist in perpetuity and should not bind successors in title. They should be flexible as to the environmental outcomes and the site itself.

Our view is that the legal vehicle for delivering biodiversity net gain should recognise the need to achieve environmental outcomes, without necessarily binding the landowner or provider into onerous, perpetual obligations. The vehicle for providing biodiversity net gain should not be a 'one size fits all' approach. There might be circumstances in which a conservation covenant would be suitable for the environmental outcomes, for example a charity might wish to create a large permanent wetland habitat, however, there might also be circumstances where a less lengthy arrangement would be appropriate (as outlined above), for example on-farm hedgerow planting and management.

We believe that there could be a place for management agreements as an alternative to the rigidity of a conservation covenant which binds successors in title and exists in perpetuity. Some environmental outcomes might benefit from a more flexible agreement (for example heathland). Flexibility is required to allow management to change to reflect establishment/creation of the environmental outcome.

As outlined above, we believe that where landowners are the providers of biodiversity through the net gain policy, then the parties to any agreement should be at liberty to agree the terms of the agreement as between them. Each site will have its own unique outcome and therefore the obligations within the agreement are likely to be unique to that particular site.

Recommendation. The NFU has concerns about the use of conservation covenants; they should not exist in perpetuity and should not bind successors in title. They should be flexible as to the environmental outcomes and the site itself.

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

If the aim is to create an effective marketplace, consisting of a market with many providers, then a range of legal vehicles for delivery needs to be available. Potential offset providers could take many forms and include large landowning estates and also farmers.

In terms of safeguards, we believe that conservation covenants, if introduced, should be as flexible as possible to recognise the circumstances and needs of the farming business. It should be for the provider (farmer) to negotiate and agree the terms of any legal vehicle to deliver biodiversity offsetting.

As outlined above, we do not believe that conservation covenants should automatically exist in perpetuity and bind successors in title; but they should offer flexibility as to the particular habitat creation, conservation requirements and the length of the obligations. Importantly, they should also address the issue of future modification, and also termination.

We also have concerns that the introduction of conservation covenants could add to the complex legal landscape that already exists alongside European and domestic land designations.

At present, farmers wishing to undertake measures that would be beneficial for the environment have a number of vehicles they can use to achieve those aims. This includes voluntary schemes like the Campaign for Farmed Environment, and agri-environment schemes under the CAP. Going forward post-Brexit there will be other mechanisms to meet environmental outcomes in line with the domestic policy framework. Therefore the proposal of conservation covenants appears very restrictive and not at all complementary of existing delivery schemes, given that that they could severely restrict future use of land.

Whilst we accept that some statutory agreements such as agri-environment agreements made under section 7 of the Natural Environment and Rural Communities Act 2000 do bind successors in title, these agreements are for a term of five or ten years. They do not exist for lengthy terms, nor do they exist in perpetuity.

We also have concerns about delivery intermediaries holding funds for delivery and whether these companies / bodies have the necessary financial tools in place to accommodate the requirement for providing habitat 'in perpetuity'. There needs to be security for the provider, to ensure that funds are available for the entire length of the contract. The financial arrangements need to cover all eventualities including the fund holder/ intermediary becoming bankrupt / insolvent. In these circumstances either the funds must remain available for the provider for the duration of the agreement or the provider must be able to terminate the agreement or covenant.

Recommendation. We do not believe that conservation covenants should automatically exist in perpetuity and bind successors in title. We believe that conservation covenants if introduced should be as flexible as possible to recognise the circumstances and needs of the farming business. It should be for the provider (farmer) to negotiate and agree the terms of any legal vehicle to deliver biodiversity offsetting.

Calculating and collecting the tariff

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

The NFU agrees that the proposed tariff should cover the cost of replacing and maintaining lost habitats whilst factoring in local cost pressures such as land prices as well as the delivery and monitoring costs of the compensation scheme. It is difficult to assess whether the proposed tariff range of £9,000 - £15,000 per biodiversity unit would cover these costs. This is because the cost of delivery would vary significantly based on the duration requirements for the created habitat which is yet to be defined.

In addition there is limited discussion in the consultation on the rights and obligations of a landowner once the duration of the biodiversity unit has elapsed. On this front, the discussion of conservation covenants and the aspiration to create legally binding obligations of delivery for future generations is particularly troublesome for farmers who will in effect lose the ability to make an economic return from their asset and respond to evolving market demands. In practice, the prospect of restrictions being applied to land use following the duration of the biodiversity unit will constrain appetite amongst farmers to supply biodiversity units unless the potential opportunity costs are priced into the biodiversity unit and any restrictions are appropriately time limited. Ensuring any requirements are time limited would be particularly critical as pricing in the opportunity cost over perpetuity (or a suitably long period to represent perpetuity, such as over a 100 years) would inflate the tariff to unviable values.

Using the example in the consultation impact assessment which is based on a 30 year biodiversity unit delivery duration and taken from a joint RSPB, National Trust and Wildlife Trusts study, the tariff costs proposed are likely to be too low to incentivise national level supply of biodiversity units from farmers. This is because the study utilises broad average unit costs which in practice vary significantly due to changes in prices and yields for agricultural produce and labour costs. As stated in the source study, the model provides conservative estimates of the full-cost of land management which are based on existing agri-environment rates. Such rates reflect the income foregone and implementation costs incurred for the average scheme entrant. In practice, many farmers will incur costs much higher than those stated based on their location and the farming system that they operate. In order to have a broad level of national coverage for biodiversity unit delivery and to ensure a widespread supply of biodiversity benefits, the tariff range may need to be broadened to reflect regional cost pressures.

Another issue as highlighted in the study is the cost of maintaining the current land uses required to support the identified land management practices. Current land uses such as livestock grazing may be significantly impacted by the outcome of post-Brexit trade arrangements, the planned phase-out of direct support payments and the incentives for future environmental land management schemes. This will significantly impact the cost estimates applied in this study as the operating environment for British agriculture adjusts to a new trade regime. Factors

such as input price inflation, output prices, land price adjustments and labour availability are some of the key cost drivers which will adjust and in turn significantly impact the proposed tariff range stated in this study.

Given the high levels of uncertainty on the future operating environment for the industry, the NFU would advise that the suitability of the proposed tariff rates are reassessed once greater certainty is achieved. Given that the majority of existing biodiversity units in operation are provided by livestock farms due to the comparative cost advantage/suitability of such farms to deliver such schemes, the tariff will need to provide sufficient return to support the viability of complimentary farm practices and reflect the changing dynamics of the industry.

Recommendation. The tariff cost rate should be revaluated once the UK's trading, regulatory and domestic agricultural policy regime is ratified to ensure attractive payment rates in order to stimulate an active, scalable and sustainable biodiversity unit market.

More clarity is required on delivery duration, rights and obligations of a landowner post-delivery and the potential role of covenants before a full appraisal may be carried out on the proposed rates.

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

In principle, the proposed tariff mechanism could provide an opportunity for farmers to diversify their income through attracting private investment to deliver habitats. However, the aspiration to secure permanent habitat change or at least for the lifetime of the development (25-30 years) would make this an unattractive proposition for many farmers unless significantly favourable prices are offered for delivery. In this respect, a minimum duration of less than 25 years would be needed encourage greater uptake rather than the other longer term periods suggested in the consultation.

Assuming that a typical biodiversity unit delivered by a farmer is of low to medium distinctiveness (thereby avoiding priority habitat creation with implied long term restrictions on land use), achieving moderate to good condition and is positioned in an area of low connectivity, low strategic significance and has a medium rating of difficulty of creation and restoration, the majority of farmers could expect to generate 2-8 biodiversity units per hectare. This would generate a payment range of £18,000 - £120,000 per hectare assuming the full tariff cost was allocated to the biodiversity unit provider.

However, a proportion of this amount will also be allocated to covering the delivery and monitoring costs of the compensation scheme. The impact assessment provides no detail on these costs which have been listed as non-monetised costs. As the consultation fails to provide detail on how the proposed tariff rate will be apportioned between administration of the scheme and providing payment to the supplier it is difficult to assess suitability of the proposed tariff range. The referenced joint RSPB, National Trust and Wildlife Trusts study however references Natural England data to suggest administrative costs amounted to 11% of agri-environment scheme expenditure in 2008 excluding the cost of any supplementary advice which has a significant bearing on the effectiveness of land management actions. If we assume total delivery and monitoring costs to amount to 20% of the total tariff rate (assuming a higher cost base due to the roll out of new delivery processes and based on the administrative burden of some existing RDPE schemes such as LEADER) the farmer could expect to receive £14,400 - £96,000 per hectare for environmental delivery over the 30 years suggested in the impact assessment.

In principle this broad payment range could provide a promising means to diversify farm income and accommodate for the variability in cost drivers for farm businesses across the farming sectors and regions. The lower range of £14,400 is unlikely to be an attractive proposition for the majority of farm businesses that are able to provide a lower number of biodiversity units per hectare (2-4 units) and may be more suited for livestock and mixed enterprises where habitat creation may be integrated into existing farming practices or integrated into less productive land. In order to attract a broad range of competitive agricultural providers, achieve broad geographical coverage and achieve sustainable delivery we find that the tariff range will need to be revised

upwards with a proposed lower tariff cost of £9,000 being too low to incentivise uptake whilst a value closer to between the middle to upper band of a £15,000 tariff has the potential to provide an attractive rate to incentivise participation and achieve scale in the early stages of net gain rollout. This view is reinforced by the consultation impact assessment which finds the Net Present Value of habitat creation and maintenance costs per hectare to be £19,698. The calculated potential lower range of payments of £14,400 per hectare would not cover the cost identified in the impact assessment. Whilst this may still mean that it is attractive for some farmers to deliver habitat of low-medium distinctiveness which may be integrated into existing farming practices, many other habitat types would not be deliverable at the lower tariff cost of £9,000 per biodiversity unit.

In addition, the structure of the payments to the farm business is also an important consideration which impacts the suitability of the proposed tariff range. If payments are staggered over the delivery duration, their present value will be lower than if the payment is made in full or weighted towards the beginning of the project. Taking the 3.5% discount rate, over 30 years, the lower range would deliver £8,829 of payments over this period averaging an annual payment of £294 per hectare of delivery. For context this is lower than payment rates for existing Countryside Stewardship options with legume and herb-rich swards having a payment rate of £309, taking field corners out of production having a rate of £365 and ryegrass seed-set as winter/spring food for birds having a rate of £331.

The key aspect to understanding the suitability of the proposed tariff cost in generating a suitable return for habitat providers is in the interaction between the multipliers and the tariff payment. Using the Defra test metric, cereals cropland of moderate condition which is managed to deliver good condition arable field margins would generate eight units. If a farmer receives 80% (net of 20% administrative costs) of the lower bound £9000 per biodiversity unit tariff payment over 30 years they would receive £35,313 per hectare (discounted at 3.5%) which translates to £1,177 per hectare per year. Under current countryside stewardship agreements, flower-rich margins and plots have a payment rate of £539 per hectare whilst a nectar flower mix has a rate of £511 per hectare. This £539 - £511 payment range represents the theoretical income foregone for the average farmer (although a conceivably higher range of crop prices would significantly inflate the actual income foregone figure). In this example, the multiplier of 4 assigned to the medium distinctiveness classification of arable field margins has helped to provide a payment rate which would provide an attractive return for an arable farmer.

What the above examples demonstrate is that the suitability of the tariff cost range is dependent on the habitat classifications and in turn the corresponding multipliers that are assigned in the final version of the metric. With high multiplier rates for priority habitat for example, the lower tariff range could feasibly provide an attractive return per hectare for some farmers (assuming farmers receive over 80% of the tariff rate), however for farmers delivering less biodiversity units per hectare the lower end of the proposed tariff range would be unattractive. As such it is recommended that the middle to higher end of the proposed tariff range will be most appropriate for stimulating a competitive market for habitat providers.

The recommendations above however are highly indicative and based on the assumptions outlined in this section whilst also assuming status quo operating conditions. In practice however the prospect of Brexit, its associated uncertainty and the sensitivity of land management costs to factors such as prices and availability of labour mean that the agriculture sector may likely face inflationary pressures in the years ahead. In order to achieve scalable uptake from farmers of biodiversity unit delivery, evolving market pressures may need to be reflected in a higher tariff range than that proposed in the consultation with a particular focus on revising up the bottom of the range.

In summary, a favourable tariff rate will need to be set to stimulate the supply side, price in the risk of uncertainty in the early years of net gain delivery and to achieve scale. The NFU agrees with the consultation impact assessment, that there is significant potential for economies of scale benefits which can be delivered by farmers more efficiently than the majority of other potential suppliers. In order to develop an active market in biodiversity units with a high level of agricultural engagement, the tariff rate must be set at a level which compensates for the high levels of uncertainty expected over the next 30 years. As the mechanism matures, inspires confidence and becomes more efficient, there may then be potential to revise the tariff to reflect

established market conditions but the initial proposition must be priced higher than a historical delivery costs reference point in order to provide a suitable incentive for wide uptake.

Recommendation.

Based on a 30 year delivery period, 20% familiarisation and administrative costs and assuming no restrictions on land management post-delivery, the tariff cost range will need to be revised upwards or weighted towards the middle to higher end of the proposed range to encourage uptake from farmers across all sectors and regions. If structured correctly, the middle-higher end of the proposed range could provide an attractive diversified revenue stream which would encourage uptake. This analysis assumes a status-quo operating scenario which ignores the potentially disruptive impacts of Brexit.

30. 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.

The NFU agrees with the proposed principles for setting the tariff rate but believes greater emphasis needs to be placed on the prospect of future inflationary pressures due to Brexit and similarly significant market events which may require the rate to be adjusted to reflect market factors. As such, any tariff agreement must include a mechanism to index link future payments or provide top-up payments should biodiversity unit providers face significant inflationary pressures that deem delivery of the units uneconomical. This will also ensure that positive incentives for scheme delivery are reinforced to ensure a credible and sustainable biodiversity unit delivery mechanism. Farmers are sensitive to engaging in long-term arrangements which reduce their ability to respond to volatile market conditions. Therefore, sufficient safeguards must be put in place to ensure tariff rates reflect costs at the time of delivery.

The consultation also suggests that the tariff cost range would be adjusted in line with planned metric updates to avoid unjustified increases and decreases in costs. This approach is supported provided that the reference market indices are transparent, accurate and robust and that adjustments are made in line with well-defined processes which are responsive to changing market conditions.

Recommendation. Given the proposed duration of the agreements (25+ years), any tariff agreement must include a mechanism to index link future payments or provide top-up payments should biodiversity unit providers face significant inflationary pressures or new market conditions that deem delivery of the units uneconomical.

How a tariff could be collected and spent

31. 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

Recommendation. The NFU would favour a simple approach to tariff collection that does not place extra burdens on small developers. That would seem to favour Local Planning Authorities where powers already exist and they are at the heart of the decision making on net gain.

- 32. 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

Regardless of who decides where the tariff is spent there must be a commitment that the tariff will not be used to compulsorily acquire areas of land on which to implement BNG. Any land acquired should be from a willing seller.

If the revenue is spent locally, consistency across local authorities must be a key consideration. Consideration should also be given to whether or not local authorities should be allowed to pool revenue collected between them to maximise effectiveness.

If revenue is spent nationally this may give rise to uneven distribution of funds with pockets of concentration in certain areas.

However the tariff is spent the contract arrangements with the net gain provider must be fair. The key considerations are outlined in response question 22.

Recommendation. Authorities - whether they are local or national should not be able to use the revenue to compulsorily acquire areas of land on which to implement BNG.

- 33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?**

If the decision is to have a national delivery model then there needs to be due consideration given to delivering value for money, how this aligns with other public and private funding streams for environmental delivery, and the local and national priorities. Without more information it is difficult to provide a considered answer.

The net gain process needs to be consistent across the board so that developers are able to easily ascertain what is expected from them and what needs to be budgeted for.

Recommendation. The net gain process needs to be consistent so developers can anticipate what is required in advance.

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

Regard must be given to the fact that BNG will affect rural sites far more than brownfield and urban sites and as such places the rural economy at an immediate disadvantage. Defra's policy on rural proofing states that implementation of policies in rural areas may need to be delivered differently to urban areas.

Agricultural buildings and buildings ancillary to agriculture such as pack houses can sometimes be large in size however the return on investment can be quite low in comparison to industrial and residential developments. Requiring BNG to be carried out for agricultural buildings would therefore disproportionately affect agricultural development.

Recommendation. Regard must be given to the fact that BNG will affect rural sites far more than brownfield and urban sites and as such places the rural economy at an immediate disadvantage. Requiring BNG to be carried out for agricultural buildings would therefore disproportionately affect agricultural development.

Implementation of mandatory biodiversity net gain**40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?**

There is much work to be undertaken to turn this in to a deliverable policy. There needs to be guidance to support decision making on habitat type and condition. There needs to be decisions taken over the role and purpose of local plans and strategies. Once this is known, if they don't already exist, those plans need to be developed. There needs to be accreditation developed and guidance on what makes a fair and balanced contract with a net gain provider. Only once these are in place then it would be reasonable to consider a transition period.

Recommendation. There is much work to be undertaken to turn this in to a deliverable policy.

Right of appeal**41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved? &****42. Would an additional arbitration or approval process be necessary? If so, please specify why.**

We can foresee disputes arising over the assessment of habitats and in our view the current planning system may not present appropriate dispute resolution options to address this. In our view should this arise under the present system, the LPA would be responsible for resolving the situation as part of the planning process. In addition, it is worth mentioning that we can foresee potential disputes arising over whether the provider has met requirements or outcomes i.e. some years after the offset began. We would want more clarity on how these disputes would be resolved, although we anticipate this would depend on the detail of the agreement between the provider and the contracting party.

The green paper does not outline when differences in opinion over assessment could occur. However, we can foresee this arising at the planning stage. In that scenario the LPA would be responsible for resolving the situation as part of the planning process. Also, we can see disputes arising over whether the offset provider has met requirements i.e. some years after the offset began. We would want more clarity on how these disputes would be resolved, although we anticipate this would depend on the detail of the contract between the offset provider and the contracting party.

Recommendation. We would want more clarity on how these disputes would be resolved, although we anticipate this would depend on the detail of the agreement between the provider and the contracting party.

Monitoring and evaluation – quality assurance**43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?**

It must be clear from the outset what monitoring is required and by who. Will Defra require LPAs or brokers to provide information? Will the net gain providers be responsible?

Where the LPA, a broker or developer contracts for the land manager to deliver net gain then they will be responsible for monitoring the contract delivery. Having a third party monitor deliver will only lead to disagreement and complications. Therefore, it's important everyone is clear where the liability falls. That is not currently the case. Also, there is an acceptance in the metric that habitat creation or restoration can fail. This needs to be captured in the way monitoring is carried out.

Other measures that should be taken into account should be where a development does not necessarily deliver a biodiversity net gain but does instead deliver other environmental benefits such as clean air and water or some form of renewable energy.

In addition, care needs to be taken in considering the scope for negative unintended consequences which may arise. One such example could be in relation to tenant farmers whereby biodiversity net gain may not be able to be carried out on tenanted land as it would be in breach of clauses in tenancy agreements. Alternatively, where landlord's permission is required for a tenant to erect a new building, the landlord may refuse to give permission for additional BNG to be carried out on the tenanted land because it may devalue the land. In other situations some landlords may refuse to renew tenancy agreements on the basis that they will instead use these areas of land to carry out BNG projects.

In addition, it must be made clear whether a biodiversity net gain project undertaken by a tenant becomes a tenant fixture / improvement for which end of tenancy compensation must be given. Given that 30% of agricultural land in England is tenanted this is a situation that is likely to arise. Clarity must be given on whether the provision of biodiversity units that are managed by a tenant are capable of being transferred to an incoming tenant or to a landlord on reversion of the tenancy.

Consideration must also be given to whether or not a biodiversity site increases the risk of contamination to food production units for example because the site provides vermin habitat. Further, thought must be given to whether a BNG site is likely to become a private or even public nuisance for example through spread of weeds, or issues caused by tree roots.

Recommendation. Other measures that should be taken into account where a development does not necessarily deliver a biodiversity net gain but does instead deliver other environmental benefits. Considerations in relation to tenant farmers must be taken into account as they may be put at a disadvantage when it comes to delivery on site and may have no other option than to pay a tariff to deliver at greater cost.

44. Should local authorities be required to provide information about habitat losses and gains? 45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?

There is potential for new technologies to facilitate delivery and monitoring. However, these need to be proven before they are required in the scheme. The consultation suggests the use of new technologies, such as remote sensing, to assess habitat present on a site. Experience with the Rural Payments Agency's rural land register is that satellite assessment is problematic, for example in 2017 RPA used this technology to map hedges. This placed hedges above the tree line, where they were clearly not present. The technology needs to be far more robust than it currently is, particularly if it is to identify a myriad of habitats. For example the UKHAB definitions include 19 grassland habitats which would be difficult to distinguish from an aerial photo.

Recommendation. Although there is potential for new technologies to facilitate delivery and monitoring. However, these need to be proven before they are required in the scheme.