

Consultation took place in January 2022 on the implementation of biodiversity net gain provisions contained in the Environment Act 2021. This consultation was focused on the practicalities and detail of biodiversity net gain and how it will relate to development sites going forward. The outcome of this consultation is of particular importance given the upcoming mandatory implementation of biodiversity requirements in November 2023.

On 21 February 2023, the government response and summary of consultation responses was published. A total of 590 responses were received to the consultation, the significant majority being from local planning authorities.

The government response provides a clear indication of the policy position, which will then filter down into secondary legislation, national and local planning policy.


Points of particular note include:

- Clarity is provided on types of development that will be exempt. In addition to those already allowed for in the Environment Act 2021 and the biodiversity metric, regulations will make exemptions for:
  - Development impacting habitat of an area below a “*de minimis*” threshold of 25 metres squared, or 5 metres for linear habitats such as hedgerows
  - Householder applications
  - Biodiversity gain sites (where habitats are being enhanced for wildlife)
  - Small scale self-build and custom housebuilding
- Regulations will allow for phased development, with individual biodiversity gain plans for each phase. A softening in the approach to front-loading biodiversity gain requirements in earlier phases is also noted, leaving this to the discretion of the local planning authority.
- The biodiversity net gain requirement will only apply to Section 73 applications where the original permission was granted after commencement of the mandatory biodiversity net gain requirement.
- A small-sites metric will be produced and the transition period for such smaller sites will extend until April 2024.
- For nationally significant infrastructure projects, the biodiversity net gain requirement will be in place no later than November 2025, to allow developers time to prepare.
- Confirmation is given that developers will be able to sell excess biodiversity units as off-site gains for another development, provided that this excess gain is registered and that there is genuine additionality for the excess units sold.

- The government will not develop a centralised trading platform for biodiversity units or facilitate other roles which could be performed by the private sector or other third parties, such as brokering. It will be for the buyer, seller, and any other parties to the agreement to agree payment terms. The price of units supplied by the off-site market will be determined through negotiations between the buyer and seller and are likely to vary by habitat type and location.
- Habitat banking is encouraged, with habitats created or enhanced after 30 January 2020 being eligible for registration and sale of the associated biodiversity gains, provided they meet the other criteria of the biodiversity gain site register. When biodiversity units are sold to a developer, the associated parcel of land within the habitat bank would need to be secured by a legal agreement and registered prior to approval of the biodiversity gain plan for the associated development.
- The UK government will appoint Natural England as the biodiversity gain site register operator, responsible for establishing and maintaining the register. Natural England aims to open the register for new biodiversity gain sites by November 2023. An achievable determination time for applications to the register in consultation with Natural England is proposed with a fee of between £100 and £1000 imposed. The application period is likely to be around six weeks and will need to be factored into any planning application programme.
- Natural England will sell statutory biodiversity credits, which will be facilitated by an accessible and user-friendly digital sales platform that is currently being developed and tested. The price will be intentionally uncompetitive with the market, and this remains very much a last resort.
- A significant concern is the level of support that local planning authorities will have in implementing the biodiversity requirements at a local level. The government have announced further funding of up to £16.71 million between now and November 2023. This will be followed by further new burdens funding following commencement of the requirement in November 2023.

The consultation responses make interesting reading. We are particularly interested in the opportunities available for clients through habitat banking and the sale of excess credits. This is something we are already exploring and looking to assist clients with going forward. Please contact our Planning team should you wish to discuss any aspect of biodiversity net gain or planning issues generally.

**Contact**



**David Myers**  
Senior Associate  
T +44 113 284 7257  
E david.myers@squirepb.com

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