

With the fast-approaching deadline of November 2023 for the mandatory implementation of the 10% biodiversity net gain requirement, the development industry has been waiting, with no small degree of frustration, for greater detail in the form of secondary legislation and guidance to be published.

On 27 July, we finally received some concrete updates.

Statutory Biodiversity Credit Prices

In order to meet the 10% biodiversity net gain requirement, it will be possible, as a last resort, to acquire statutory biodiversity credits. This will only apply if the developer is unable to deliver the required biodiversity on-site or off-site.

The government has published indicative prices for the statutory credits. These prices will only be confirmed once biodiversity becomes mandatory. The government has made it clear that these prices are set purposefully above anticipated private market prices for biodiversity units, to avoid undercutting the market.

A multiplier will be added to the biodiversity metric (used to calculate the required amount of biodiversity net gain) whereby if you intend to rely on statutory credits, you must acquire two credits for every one biodiversity unit you need to compensate for.

The cost of each credit is tiered to reflect the cost and value of different habitats affected by the relevant development. Habitats are classed based on “distinctiveness”, looking at the rarity of habitat and species richness. If the habitat distinctiveness is low, then the price per credit is £42,000. Medium distinctiveness ranges from £42,000 to £125,000, depending on the type of habitat. High distinctiveness habitats range from £42,000 to £650,000. Linear habitats vary in price, with hedgerows costing £44,000 and watercourses £230,000 per unit.

Please note that VAT will be added to each credit and, as a reminder, the cost will be doubled due to the metric multiplier.

Given the link to the biodiversity metric, reliance will be placed on the “competent” person appointed to complete the metric in each case to understand the cost of statutory credits.

Responsible Bodies

A conservation covenant represents a mechanism for securing biodiversity net gain. The legislation surrounding conservation covenants is already in force. However, in order to create such a covenant, it must be made with a “responsible body”. To date, it had not been possible to designate a responsible body, although this has now changed, with Defra launching an application process for organisations that want to apply to become a responsible body.

Defra has also published guidance on how to apply, including the criteria for selection and the process for revoking an organisation’s designation as a responsible body.

Defra’s criteria for becoming and remaining a responsible body are:

Eligibility

The organisation must have an operating base in the UK and be either:

1. A local authority
2. A public body or charity, where at least some of its main purposes or functions relate to conservation
3. A body other than a public body or charity, where at least some of its main activities relate to conservation

Financial Security

Defra will check that the organisation has a UK bank account, is financially secure and has adequate internal fiscal and administrative control for long-term financial viability. A number of potential checks are identified, including reviewing the company’s filing history.

Operational Capacity and Capability

The organisation must have the capacity and capability to manage and enforce the conservation covenants. Again, a number of potential checks are identified, which include looking at ecology expertise, workforce capacity, company structure and track record.

Ongoing Suitability

A successfully designated organisation must continue to meet the required criteria. An obligation is imposed on the responsible body to notify Defra if one or more of the criteria is no longer being met.

An application form has been published, which requires details to be inserted evidencing compliance with the requirements noted above. It is not known, as of yet, how involved this process will be, nor the level of detail required in the application form. However, we would certainly advise that any such application is not taken lightly and a thorough and detailed approach is taken to the application form.

Defra has specified that it will “aim to” inform the organisation of the outcome of the designation request within 12 weeks. If successful, the responsible body will need to complete annual returns by 31 March each year, noting the conservation covenants held by that organisation.

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