

# The Environment Bill: Biodiversity Net Gain

## The Draft Environment (Principles and Governance) Bill 2018

The Queen's Speech this week signalled that the UK Government remains committed to bringing forwards proposals in line with those outlined in the *Draft Environment (Principles and Governance) Bill 2018*. In this Bill the Government outlined 'a robust new system of green governance' following the UK's exit from the European Union. Should the Bill make it into law, it will do a number of things:

- Establish the Office for Environmental Protection (OEP) to scrutinise environmental policy and law, investigate complaints, and take action where necessary to make sure environmental law is properly implemented.
- Establish a clear set of environmental principles, many of which are based on the principles that underpin the existing (EU-based) legislation.
- Oblige the government to have a long-term plan for improving the environment, including the publication of indicators; and the measurement, and publication, of progress against this plan.

Additionally, and importantly, the HM Treasury's 2019 Spring Statement built upon this to suggest that the Government will: '**Mandate net gains for biodiversity on new developments in England**'. The Statement set out that it would 'explore ways to enhance the natural environment and deliver prosperity', including a review of the Economics of Biodiversity.

By inserting this commitment to mandate Biodiversity Net Gain (BNG) within the Spring Statement, the Government has paved the way for the Environment Bill to radically change the English planning system. So, what are the potential implications?

The second of two papers that examine BNG, this paper explains how the use of BNG is proposed to change following the re-introduction of the Environment Bill, and what challenges and considerations this may bring forth for those involved in the development industry.

## BNG in the Environment Bill

Although the details of the Environment Bill are still emerging, we are aware of the following

- Within the *Environment Bill summer policy statement: July 2019* the Government has set a target of 'a 10% increase in habitat value for wildlife compared with the pre-development baseline' as the increase required to achieve a measurable BNG.
- Currently NSIPs and marine development will remain out of scope of the mandatory requirement in the Environment Bill.
- 'Government will require net gain outcomes, through habitat creation or enhancement as part of delivering mandatory biodiversity net gain, to be maintained for a minimum of 30 years, and will encourage longer term protection where this is acceptable to the landowner.'
- There will be measures included to simplify the assessment of BNG for minor development, which is defined as:
  - Residential: where the number of dwellings to be provided is between one and nine inclusive on a site having an area of less than one hectare, or where the number of dwellings to be provided is not known, a site area of less than 0.5 hectares;

- For non-residential: where the floor space to be created is less than 1,000 square metres OR where the site area is less than one hectare.

In minor development scenarios, alternative ways of delivering BNG will be required, and the Government has indicated its support of the 'Basic Measurements Option' and the 'Simplified Metric Option' as outlined in BREEAM 2018 and the BNG Principles by CIEEM, CIRIA and IEMA. These approaches will become valuable when considering proportionality for small schemes and/or urban schemes.

## Planning Implications

- As noted above, delivering a measurable BNG is already a requirement of planning under the NPPF. In separately legislating for BNG within the Environment Bill there is a potential for 'double handling' of environmental considerations. As the policy framework that supports the Environment Bill is developed, the interaction with the existing NPPF will need to be resolved to avoid an unnecessary burden on developers and LPAs alike.
- Currently, the indication is that although the Environment Bill could mandate a quantifiable 10% improvement in net gain, there is no suggestion that the legislation will remove the current inconsistencies of approach currently experienced due to the range of available metrics. Therefore, although Defra is developing their 2.0 Metric, without a legislated requirement to use this metric in favour of others, inconsistencies of approach, and therefore of outcome, will remain.
- Currently, once approved, planning consents are open to a six-week period of challenge by Judicial Review. Defra's current proposals allow the Office of Environmental Protection to request a review of BNG following investigations that may take up to one year. This could mean that an approved planning application could be reviewed on BNG grounds under a future Environment Act after the appeal period allowed by the Town and Country Planning Act has elapsed. We understand that the Government's intent is that this would not undermine the validity of a planning consent (and therefore not have an impact on developers) except in cases of exceptional public interest or environmental harm. This will need to be managed carefully as the Environment Bill becomes law to avoid an impact on developer and investor confidence.
- The Environment Bill introduces the requirement for the Government to develop a 25-year plan for improving the environment. Under the Town and Country Planning Act, LPAs are responsible for developing local plans which cover a 15-year plan period. Clarification may be required to establish the correct hierarchy, or inter-relationship, between 15-year local plans and the 25-year environment plan.
- 'Development' as defined by the TCPA is only one source of impact on biodiversity, and arguably a minor one. To achieve a meaningful impact, the Environment Bill will need to introduce a much more holistic approach to biodiversity conservation, including potentially regulating activities within arable farms. The Government's response to this issue, particularly in light of the end of the Common Agricultural Policy and the push to open up food markets, will be an important factor in determining the overall effectiveness of the Environment Bill.

For more information on Biodiversity Net Gain, the Defra Metric 2.0, pending changes as a result of the Environment Bill, and to explore the implications for your team please contact [Harry Quartermain](#) (Associate Director of Planning ) or [Greg Nightingale](#) (Principal Ecologist).

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