

Response to Defra's consultation proposals on Net Gain

8 February 2019

About Energy UK

Energy UK is the trade association for the GB energy industry with a membership of over 100 suppliers, generators, and stakeholders with a business interest in the production and supply of electricity and gas for domestic and business consumers. Our membership covers over 90% of both UK power generation and the energy supply market for UK homes. We represent the diverse nature of the UK's energy industry – from established FTSE 100 companies right through to new, growing suppliers and generators, which now make up over half of our membership.

Our members turn renewable energy sources as well as nuclear, gas and coal into electricity for over 27 million homes and every business in Britain. Over 680,000 people in every corner of the country rely on the sector for their jobs, with many of our members providing long-term employment as well as quality apprenticeships and training for those starting their careers. The energy industry invests over £12.5bn annually, delivers around £84bn in economic activity through its supply chain and interaction with other sectors, and pays £6bn in tax to HM Treasury.

Executive Summary

- Energy UK welcomes the intention to use the Biodiversity Net Gain (BNG) principle as a tool to streamline decision-making in the planning process. We consider there to be potential for the BNG principle, if applied appropriately, to achieve this. There are, however, a number of areas where we would welcome further clarification or consideration to ensure that the BNG proposals deliver for the environment without placing additional burdens on the development industry.
- We welcome recognition of the critical role of mitigation hierarchy in managing environmental impacts and that BNG principles would only be mandatory when mitigation is not possible. It is therefore important that the costs of enhancement works to deliver BNG are not additional and replace, rather than duplicate, those of mitigation efforts. We therefore welcome the clarification within the consultation that the government “will only mandate biodiversity net gain if it is satisfied that it will deliver benefits for development, including greater certainty and process cost savings”. The delivery of BNG at a proportionate level should be recognised within the planning decision-making process and afforded due weight in the planning balance.
- For the implementation of BNG principles to be successful, efforts must be made to ensure the requirements do not delay projects or result in additional costs for developers. Specifically, careful consideration must be given to ensuring that adequate resources (including staff availability and appropriate expertise) are in place within local planning authorities and within key statutory advisors such as Natural England. This is to ensure that proposals for BNG can be assessed at the planning stage and projects are not delayed by the addition of BNG principles. In our experience, many of the relevant stakeholders in the Planning and Nationally Significant Infrastructure Projects (NSIP) process are already facing significant resourcing issues and we would not want to see the introduction of BNG principles further compound this issue.
- Post-consent, there is a need for a robust delivery mechanism that sits apart from planning conditions. Planning obligations, covenants and tariffs may work but will require methodologies to establish the baseline and then monitor the success, or not, of any BNG schemes. Within the environmental sector there is a move away from enforcement and towards adaptive management, thus if a habitat creation needs to be tweaked or amended then this can be prescribed. This will require resourcing and funding at an appropriate geographical scale.

- As well as adequate resource, ensuring that appropriate expertise is available to key stakeholders, advisors and decision-makers will be critical to the successful implementation of these proposals. We would therefore welcome further information on proposed training and guidance and how this will be made available to ensure that stakeholders are informed and empowered to be able to provide clear, consistent and proportionate advice to support the decision-making process.
- Should future proposals for BNG be developed for the marine environment, we would ask that the offshore wind sector is closely involved in these discussions to allow us to share our experience of the challenges of delivering mitigation and enhancement works within the marine environment.
- In our view, there may be opportunities to better coordinate strategic research and environmental enhancement works through the establishment of a strategic funding pot delivered via the principle of BNG.
- Establishing meaningful initiatives within the marine environment will be challenging and will require careful consideration of scale, connectivity and species mobility will be required against an appropriate baseline. We would be pleased to provide further input as proposals progress.

Response to Consultation Questions

Q1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and Country Planning Act?

Energy UK strongly supports the development of opportunity maps to help developers identify where offsets can be carried out locally if it is mandatory that they do so. We also consider that guidance needs to be published to specify where liabilities for the delivery of net gain lie when a developer delivers this through an offset bank, or a third party.

Energy UK does not have any comment to make on mandating net gain for developments within the scope of the Town and Country Planning Act; however, as a general point of principle, we consider that net gain should not be made mandatory until offset maps and guidance on liabilities for third party offsetting are made available.

Q2. What other actions could government take to support the delivery of biodiversity net gain?

We would like to highlight the need to follow the mitigation hierarchy, and only resort to the use of biodiversity offsetting when all other options for mitigation have been exhausted.

One of the key ways in which Government can support the delivery of BNG is by providing flexibility to, and empowering Local Authorities to take account of the fact that different types of developments in different areas affecting different habitats will need to be assessed on a case by case basis. This will allow the most appropriate solutions to be found to deliver net gain for developments, without being unnecessarily burdensome for small developments, but being robust enough to mitigate risks from larger developments, or those in particularly sensitive areas.

From our members' experience of managing Sites of Specific Scientific Interest (SSSIs) that they own adjacent to their power stations, we have seen the quality of monitoring conducted by Government agencies seriously affected by reductions in funding. An inability to monitor sites is likely to result in poor quality data (or even none at all), which would fundamentally undermine this framework. Furthermore, where landowners are monitoring their own sites, it is important that they are properly overseen to ensure that the data is correctly and consistently collected.

Whilst it is important to ensure that simple, low-cost policy interventions are made to deliver environmental benefit in relatively short time periods, we are concerned that putting too much focus on “indicators that are capable of detecting changes over short to medium (1 – 6 year) time periods that are amenable to policy interventions” may risk diverting resources to ‘quick wins’ from potentially more important long-term issues. It is therefore important to acknowledge the importance of indicators of longer-term changes which take account of contextual data, such as temperature, rainfall and other climatic indicators.

Q3. 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?

Energy UK does not have a view on specific exemptions to a mandatory BNG requirement; however, we would caution against giving too many exemptions to this requirement, as it could end up fundamentally undermining the policy.

Q5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

Energy UK supports the use of simplified, streamlined processes where possible (e.g. for small, or low risk projects) to minimise the costs of administering this policy, whilst still effectively achieving net gain.

Q10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

Energy UK does not have a preference for which tool should be used to measure changes to biodiversity.

Although using a metric approach aims to provide a comparable evidence base by which to set possible mandatory requirements and a transparent and consistent basis for decision-making, it is important this allows for flexibility to reflect the specific characteristics of the development and the receptor. It is therefore welcome that the proposed approach builds in flexibility and recognises that it may not always be possible to enhance biodiversity on site. Including options to compensate elsewhere, or pay a tariff, provides required flexibility to ensure that environmental enhancement are not tokenistic and do not create unnecessary delays to development of projects and decision-making.

We would like to highlight the fact that the output from these tools is complex, contextual and subject to a range of uncertainties. We suggest that when these tools are used to calculate net gain, the results are presented in the right context, and including the relevant uncertainties. This should prevent the output from these tools being oversimplified and misunderstood.

Q12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

Energy UK does not have a strong view on the level of gain that should be set by Defra. However, we would like to highlight the difficulty in assessing a precise level of gain when using a tool, such as the Defra biodiversity metric, that inherently includes a significant amount of uncertainty. We suggest that when Defra sets this level, it does so in a way that communicates these uncertainties.

Q14. Would this be an appropriate approach to directing the location of new habitat?

Setting the tariff such that distant habitat creation is generally more expensive than delivering habitat on site, or locally appears to be a sensible approach to directing the location of new habitat. This should incentivise creation of habitat locally, whilst giving developers the flexibility to create habitat further away if there is a good reason for doing so.

Q15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

From our members’ experience of managing SSSIs that they own adjacent to their power stations, we have seen the quality of monitoring conducted by Government agencies seriously affected by

reductions in funding. An inability to monitor sites is likely to result in poor quality data (or even none at all), which would fundamentally undermine this framework.

Robust biodiversity assessments are based upon robust data. We therefore suggest that the best way for Defra to ensure that biodiversity assessments are robust is to ensure that good quality data is collected by authorities such as Natural England and made easily accessible to developers and planning authorities.

Q18. What other measures might reduce the risk of incentivising intentional habitat degradation?

Energy UK considers the protections afforded to habitats provided by the EU's Birds and Habitats Directives to play an important role in creating a legislative framework that prevents intentional habitat degradation. As the UK leaves the EU, it is important that these protections are not repealed or diluted, as this would be likely to increase the risk of intentional habitat degradation.

A clear signal from Defra and its agencies that it will robustly enforce the law, and that it will be paying close attention to the issue of intentional habitat degradation prior to a sale or planning application being submitted would help to disincentivise such behaviour.

Q20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?

Energy UK strongly supports the development of these opportunity maps. We consider it useful for these to be developed locally; however, it is unlikely that Local Authorities and Wildlife trusts will have the resources to deliver these. We therefore believe that central Government support for this (i.e. through a national framework) is the most appropriate way to deliver these maps.

Q24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

Energy UK considers it important for there to be a significant minimum duration for the maintenance of created and/or enhanced habitats. If habitats are allowed to fail shortly after they are created or enhanced, then net gain will not have been delivered in a meaningful way.

Q25. If so, what should the minimum duration be?

We do not have a preferred minimum duration for the maintenance of created and/or enhanced habitats. Given the range of different types of habitats that may be delivered under this policy, and the range of different areas that they may be delivered in, we suggest that the minimum duration for maintenance should be determined on a case by case basis.

Q26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?

Energy UK considers the development of conservation covenants to be an effective way of securing long term benefits of habitat creation and/or enhancement. These covenants could help to allay doubts that sceptical stakeholders may have about the effectiveness of this policy in the long term.

Q43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?

From our members' experience of managing SSSIs that they own adjacent to their power stations, we have seen the quality of monitoring conducted by Government agencies seriously affected by reductions in funding. An inability to monitor sites is likely to result in poor quality data (or even none at all), which would fundamentally undermine this framework. Furthermore, where landowners are monitoring their own sites, it is important that they are properly overseen to ensure that the data is correctly and consistently collected.

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