



National Audit Office



REPORT

Implementing statutory biodiversity net gain

Department for Environment, Food & Rural Affairs
and Natural England

SESSION 2023-24
17 MAY 2024
HC 729

Key facts

32% loss **10% gain** **£54.2mn** **£9.6bn**

on average in species abundance for 682 terrestrial and freshwater species between 1970 and 2021, for which England-specific data are available

in habitat required through statutory biodiversity net gain (BNG) in England from small and major developments. The Department for Environment, Food & Rural Affairs (Defra) and Natural England use habitat as a proxy for biodiversity

Defra's spending to prepare for statutory BNG between 2021-22 and 2023-24; it expects to spend nearly £200 million in total by 2032

Defra's central scenario of the value of net benefits from statutory BNG arrangements over a 10-year appraisal period (2021 to 2030 inclusive), as set out in its 2019 impact assessment (in 2017 prices)

£1.4 billion

Defra's central scenario of the annual social benefits to people and local communities from statutory BNG, set out in its 2019 impact assessment (in 2017 prices)

2022

Defra's accounting officer considered that the test for whether statutory BNG would deliver value for money was met

November 2021

Defra started its implementation of statutory BNG, which it expected to take two years

February 2024

Defra launched statutory BNG for major developments in England on 12 February (and for small developments on 2 April)

**Around
£135 million to
£274 million**

Defra's estimated annual size of the biodiversity units market (from 2021 analysis)

**£42,000 to
£650,000**

Defra's range of prices for statutory biodiversity credits that developers can purchase, representing 54 different habitats (such as grassland, and peat lakes)

**£26,807 or
£43,467**

funding allocated to each of 341 local authorities and other planning authorities in 2023-24 to prepare for statutory BNG

Summary

1 Biological diversity, or biodiversity, is the variety of all life on Earth. It supports many of the things that people rely on, including food, water and medicine, as well as a stable climate and economic growth. Declines in biodiversity can lead to depleting natural capital; the elements of the natural environment – for example, soil, water and air – that provide goods and services to society. In 2020, the Natural History Museum reported that Britain had lost a larger proportion of its natural biodiversity than almost anywhere else in western Europe, and the most of all G7 nations.¹ In 2023, the State of Nature report identified an average 32% decline in species' abundance in England between 1970 and 2021, across 682 terrestrial and freshwater species.²

2 In 2018, the government published *A Green Future: Our 25 Year Plan to Improve the Environment* which introduced “thriving plants and wildlife” as one of its 10 goals.³ In 2021, the Environment Act made provision for statutory biodiversity net gain (BNG), and for statutory biodiversity targets. The government’s *Environmental Improvement Plan 2023* upgraded the 25 Year Environment Plan goal to make halting the decline in biodiversity and achieving thriving plants and wildlife its “apex” goal.⁴ It highlighted implementing statutory BNG as one of the ways the government will “make further progress” against this goal.

3 BNG is a way of creating and improving natural habitats and ensuring that land development has a measurably positive impact (net gain) on biodiversity, compared to what was there before.⁵ The Department for Environment, Food & Rural Affairs (Defra) and Natural England use habitat as a proxy for biodiversity. Statutory BNG, which the government brought into effect from February 2024, is unique to England. While there are examples of mandated BNG in states or regions elsewhere in the world, this is the first time a government has introduced it as a national legal requirement.

¹ Natural History Museum, *UK has 'led the world' in destroying the natural environment*, 2020 (viewed 30 April 2024). The G7, or Group of Seven, is an informal bloc of industrialised democracies: the United States of America, Canada, France, Germany, Italy, Japan and the United Kingdom.

² F Burns et al., *State of Nature 2023*, the State of Nature partnership, 2023 (viewed 30 April 2024).

³ HM Government, *A Green Future: Our 25 Year Plan to Improve the Environment*, January 2018 (accessed 2 October 2023).

⁴ HM Government, *Environmental Improvement Plan 2023*, February 2023 (accessed 2 October 2023).

⁵ The Town and Country Planning Act (1990) defines development as the “carrying out of building, engineering, mining or other operations in, on, over or under the land or the making of any material change in the use of any buildings or other land.”

4 Statutory BNG requires developers' planning applications to adhere to a biodiversity gain hierarchy, where harm to habitats is avoided and minimised as much as possible, and harm that does occur needs to be compensated for. It prioritises on-site BNG, the creation of new habitat in the same place as the impact to biodiversity. When on-site habitat creation or enhancements are not enough to meet a statutory 10% gain requirement, then off-site gains can be created by the developer elsewhere or purchased in a new private market for biodiversity units. Through this market, landowners and land managers create or enhance habitat that can be sold as biodiversity units to developers. Once created or enhanced, the habitat must be maintained for at least 30 years. The government expects market participants to negotiate prices for biodiversity units that are likely to vary to take into account features that include habitat type and location. The government will also act as the biodiversity provider of last resort by selling statutory biodiversity credits to developers unable to otherwise secure on- or off-site options.

5 The government is implementing statutory BNG through a phased introduction, with major developments in scope from 12 February 2024, small developments in scope from 2 April 2024, and plans for 'nationally significant infrastructure projects' to be in scope by November 2025.⁶ The government states its objectives for statutory BNG are that:

- All required developments in England provide a net gain in biodiversity in ways that support local nature recovery priorities.
- Mandatory BNG provides a standardised approach through which development delivers BNG with increased ease, consistency and transparency.⁷

6 Defra has overall responsibility for statutory BNG in England, including the design, performance and overall value for money the policy achieves. Natural England, an executive non-departmental public body, delivers and administers aspects of statutory BNG on Defra's behalf, including to sell statutory biodiversity credits as biodiversity provider of last resort. In addition, the Department for Levelling Up, Housing & Communities (DLUHC) is the policy owner of, and oversees, the planning system in England. Local authorities across England have an important role managing statutory BNG responsibilities in their local areas, including considering new development proposals and enforcing statutory BNG locally. The government expects a range of private sector entities – including land managers, and developers – to buy, sell and manage the habitats that provide biodiversity units.

6 Nationally significant infrastructure projects are large scale projects like power stations, highways and power lines. They are treated separately from normal local authority planning because of their size and importance to wider communities.

7 In this report we mostly use 'statutory' to describe government's requirements for BNG. Defra and Natural England occasionally also use 'mandatory', which we use when stating information from its source.

Purpose and scope of this report

7 This report examines the progress Defra and Natural England have made in implementing statutory BNG, and whether they have done so in a way that maximises benefits and effectively manages risks. We have produced it in response to a request from the Environmental Audit Committee to contribute to its inquiry into the role of natural capital in the green economy. This report:

- assesses the government’s approach to implementing statutory BNG, and how it expects the policy to contribute to its biodiversity objectives;
- examines how the government designed and launched statutory BNG;
- considers key risks the government will need to manage as it seeks to maximise the value statutory BNG can provide; and
- makes recommendations aimed at supporting Defra and Natural England to maximise value and manage risks to statutory BNG as policy implementation becomes business as usual.

Key findings

The government’s ambitions and preparations for statutory BNG

8 The government intends statutory BNG to secure a measurable improvement in habitat for biodiversity, although Defra expects its overall contribution to national biodiversity targets to be small. In 2019, Defra stated the primary aim of statutory BNG is to “secure a measurable improvement in habitat for biodiversity whilst streamlining development processes.” Statutory BNG requires an increase of only 10% habitat creation or enhancement when land is developed, so the government expects this policy to generate a low level of additional biodiversity overall. The government has separately and subsequently set national targets for habitats and species (biodiversity). Defra expects the likely contribution of statutory BNG to these targets to be small; however, it does not consider that this means these targets are at risk or unachievable. In its 2019 impact assessment, Defra considered a 10% gain would deliver genuine gain, or at least no net loss, given uncertainties such as habitat measurement error, imperfect enforcement, and time-lags in habitat compensation activities (paragraphs 1.2, 1.4, 1.10 and 1.11).

9 A range of stakeholders expressed support for statutory BNG, although some felt it would be challenging to implement. We spoke to organisations in national and local government, charities, professional associations and private companies about statutory BNG. No one we spoke to was opposed to it in principle, and responses to the government’s consultation in 2019 also indicated that it had a broad base of support across different sectors. Concerns raised with us during fieldwork included uncertainty around the launch, preparation costs, and a lack of definitive information or understanding about the processes and systems involved (paragraph 1.6).

10 Defra set a challenging timetable to implement statutory BNG and subsequently announced a delay. In 2019, Defra committed to launch statutory BNG within two years of the Environment Act coming into force. Implementing statutory BNG as a national legal requirement was complex and novel. In summer 2023, Defra was aware that launching in November 2023 would be unlikely, as the project had not met several internal milestones in 2022 and early 2023. Challenges included the novelty of the processes and systems it was creating; limited capacity within Defra and its delivery partners (including DLUHC, which is responsible for planning legislation, but had limited capacity to support statutory BNG given other legislative priorities); plans being unexpectedly limited by the scope of the Environment Act; and delays and uncertainty as a result of ministerial turnover during a period when Defra had three different secretaries of state. The Environment Secretary did not announce a delay to the launch of statutory BNG until September 2023, giving stakeholders little notice of the change. Defra told us the delay benefitted stakeholders, who had more time to prepare (paragraphs 2.2, 2.3, 2.5 and 2.7).

11 From summer 2023, Defra increased its capacity and strengthened its management arrangements. It launched statutory BNG in February 2024, 10 weeks later than originally planned. Defra sought to increase the capacity of its statutory BNG team from 13 to 20 full-time equivalent (FTE) posts, although it was not able to fill all these and averaged about 13 FTE up to launch. Defra doubled capacity in the project lead role and brought in a specialist project manager. New governance, project and risk management arrangements strengthened its oversight, helped it make progress, and mitigated implementation risks as far as they were under its control. In January 2024, Defra decided it was content with a February launch date. Defra launched statutory BNG for most new major developments, 10 weeks later than planned, on 12 February 2024: from that date, new planning applications for all eligible developments had to meet new statutory requirements. When it launched statutory BNG, it assessed that four out of 13 'open' project risks would have a high impact if they materialised, and another as very high impact, but also judged that it could tolerate the risks the project was carrying. Some elements were less developed than Defra and Natural England originally intended, but they considered all to be sufficiently prepared based on their assessment of readiness or demand (paragraphs 2.2, 2.6, 2.15 and 3.2, and Figure 6).

12 Defra supported local authorities to prepare for statutory BNG, but acknowledged their preparedness varied at launch. Defra has funded and engaged 341 local authorities and other planning authorities; and funded the Planning Advisory Service to provide advice and training to support local authorities with their statutory BNG preparations. Defra and the Planning Advisory Service provided tools and support, including a readiness checklist, which have been welcomed by the sector. Some local authorities expressed concerns to us that they were not ready to implement statutory BNG, and that it would take time to catch up with those that were. Defra acknowledges that there was mixed readiness at launch, but does not yet have a detailed assessment of overall readiness. Statutory BNG introduces new requirements in the planning system that rely on ecologist expertise; however, in 2023, the Chartered Institute of Ecology and Environmental Management reported a capacity crisis and skills gap in the ecology sector. In the two years preceding launch, Defra provided funding allocations of either £26,807 or £43,467 to each local authority, of which £22.4 million (89% of the total available) has been claimed. This funding could be spent on anything related to statutory BNG preparations, such as recruiting and training ecologists, legal support or new software (paragraphs 2.9 to 2.14 and 3.8, and Figure 5).

13 In 2019, Defra estimated that the value of benefits statutory BNG would generate would be far greater than its cost to government, and in 2022 that it was likely to provide good value for money. In 2019, Defra estimated the value of net benefits of the policy over a 10-year period, from 2021 to 2030 inclusive, to be £9.6 billion. This estimate included “natural capital” benefits, encompassing elements such as wellbeing and quality of life, valued at £1.4 billion a year (both estimates in 2017 prices). In the three years for which Defra has data, between 2021-22 and 2023-24, Defra spent in total £54.2 million preparing for statutory BNG, of which £28.5 million was provided to Natural England, including to develop new digital tools. Defra expected to spend £78 million to support statutory BNG to become business as usual up to November 2028, and nearly £200 million in total by 2032 (including funding to other organisations; however, spending after 2025 will be subject to spending reviews). Defra expects elements of statutory BNG to be cost-neutral in the long term. In 2022, Defra’s assessment of the costs was considered and approved by the accounting officer as likely to be good value for money. Natural England intends to conduct a value-for-money evaluation as part of its policy evaluation, which will seek to establish whether the implementation of statutory BNG is providing biodiversity gains in a cost-effective way. However, it recognises the actual environmental and social benefits will be difficult to quantify and monetise (paragraphs 1.7 to 1.9, and 2.12, and Figure 3).

Risks to the long-term benefits of statutory BNG

14 Defra is still developing its post-launch governance arrangements, and the outcomes from its policy will ultimately rely on organisations outside central government over which Defra has limited influence. Following the launch of statutory BNG, Natural England is responsible for the statutory biodiversity register, credit sales service, and monitoring and evaluation. Defra and Natural England are still working through the details of the future BNG governance arrangements, and Defra started to reduce the size of its statutory BNG project team from April 2024. Defra told us that, as policy owner, it will set out how it will oversee the BNG system in line with statutory requirements, and taking into account roles of other organisations, including local authorities, in delivering BNG. Local authorities have a legal obligation to comply with their duties to manage statutory BNG locally. Defra intends to continue to encourage landowners and other potential gain site providers to engage with the private biodiversity units market, and has increased the size of its team conducting this work. It will also review statutory credit prices, seeking to ensure that they remain relatively expensive and uncompetitive with the private biodiversity units market. Defra does not otherwise intend to monitor or influence the private biodiversity units market, nor seek assurance as to how well on- and off-site biodiversity gains are being enforced by local authorities or responsible bodies (paragraphs 2.16, 3.4 to 3.7, 3.11 to 3.13, 3.15 and 3.19, and Figure 7).

15 The discretionary nature of local authority planning enforcement means that there are compliance and enforcement risks. Local authorities have a legal duty to: approve developers' plans where they meet the BNG requirement; oversee on-site and most off-site gains; monitor compliance and take enforcement action as appropriate. While Defra's calculation of the new burden to local authorities included an amount equivalent to a 0.2 FTE post, to acknowledge monitoring and enforcement requirements, local authorities have not received additional funding specifically to monitor or enforce on-site gains. Academic research in 2023 on voluntary BNG (before statutory BNG was launched) found a governance gap for on-site gains that risked them being unenforceable. Planning enforcement guidance from DLUHC states that local planning authorities have discretion to take enforcement action when they regard it as expedient to do so (paragraphs 2.8, 2.11, 2.12 and 3.10, and Figure 7).

16 Defra is relying on a market for biodiversity units emerging, but does not know how rapidly this market can scale up, or whether the market can satisfy demand.

In November 2023, Defra’s project board identified market readiness as “a growing concern”. The Environment Act did not allow Natural England to open the statutory biodiversity register until launch, and therefore Defra and Natural England relied on market feedback to inform them of environmental improvements land managers were gearing up to offer and how those would translate into biodiversity units available for developers to purchase. Defra’s assessment of the biodiversity units market in December 2023 estimated its total land area but not the type or quality of proposed enhancements. Defra increased its focus on the early development of this market after launch, working with stakeholders to encourage a variety of habitat types. In 2021, research commissioned by Defra estimated the expected annual size of the biodiversity units market to be around £135 million to £274 million. At the start of May 2024, 10 weeks after statutory BNG launched, two gain sites offering in total 35 hectares were on the statutory biodiversity register. Should biodiversity units of the right type or quantity not be available from the private market, Defra’s solution is for developers to buy statutory biodiversity credits (paragraphs 1.10, 2.5, 3.12 to 3.14, and Figure 7).

17 Defra does not yet have a mechanism to spend income from statutory credit sales to enhance biodiversity. Where a developer is unable to meet a requirement for biodiversity gain on- or off-site, Natural England (on behalf of Defra) will act as biodiversity provider of last resort by selling them statutory biodiversity credits. Defra set the price of these statutory biodiversity credits deliberately high to avoid competing with the private biodiversity units market, and has committed to review these prices every six months. Sale income must be used to improve biodiversity, but does not need to be spent on the same type of habitat that was devalued by the development. Defra and Natural England have been developing their approach to spending income from the sales of statutory biodiversity credits since 2020. Defra has not yet been able to identify a mechanism that is legal and consistent with, for example, HM Treasury rules on managing public money. As a result, at the start of May 2024 it is still exploring a range of options to fulfil the government’s role of biodiversity provider of last resort (paragraphs 3.14, 3.15 and 3.17, and Figures 6 and 7).

18 Defra does not yet have access to all the information that it will need to understand how well statutory BNG is working. While Natural England has published a policy evaluation plan for up to 2025, it and Defra are still developing their approach to monitoring and evaluating statutory BNG. Information about some elements is either not available as expected, or is difficult to combine to give a complete picture of impact. For example, Natural England has access to information from the statutory biodiversity register, but this only relates to off-site gains. It does not currently have a comprehensive source of information about on-site gains. Defra is exploring what information might be available from local authority reporting against their statutory biodiversity duty, although this will only be available at five-yearly intervals. Without information that is complete and of good quality, there is a risk that the government will not know whether statutory BNG is working as intended, and could miss insights useful for Defra's wider work to leverage green finance for environmental improvement (paragraphs 3.18 and 3.19, and Figure 7).

Conclusion

19 In November 2021 Defra publicly committed to launch statutory BNG within two years. It worked quickly, developing a novel policy through an existing and complex planning system, and statutory BNG was launched in February 2024. However, in prioritising launching the policy it accepted some significant risks to effectiveness which it must now manage as the policy moves from implementation to business as usual.

20 Defra launched its policy before having all the elements in place that it needs to ensure statutory BNG is a success in the long term. Although it considered that the arrangements it had in place at launch were sufficient, it has a long way to go before it can be confident that damage to biodiversity through development will not be understated and that the benefits of biodiversity enhancements will actually be delivered. For its market-led approach to work, Defra needs the market to scale up to meet demand, and for statutory biodiversity credits to deliver biodiversity when the market fails to do so.

21 Local authorities manage many aspects of statutory BNG through the planning process, including ensuring compliance and enforcement. For now, there is doubt about whether local authorities will be able to discharge these duties effectively. In addition, it is not clear whether Defra will have sufficiently granular monitoring data to assess policy performance. Without these, Defra will not have assurance that its statutory BNG policy is delivering biodiversity outcomes and value for money for taxpayers.

Recommendations

22 On managing risks as statutory BNG embeds as business as usual, Defra should:

- establish arrangements to understand and respond to system-wide risks and opportunities;
- ensure it retains sufficient capacity and capability to deal with any challenges requiring central government leadership or response;
- monitor the extent to which the private market for biodiversity units is growing at the pace and scale it needs to in order to provide developers with the range of habitat types they require;
- establish a mechanism for spending income from the sales of statutory biodiversity credits in a timely way that fulfils the government's role as biodiversity provider of last resort; and
- determine how it will monitor the effectiveness of compliance and enforcement by local authorities and responsible bodies, to give Defra adequate assurance that these organisations are complying with their statutory BNG obligations.

23 On facilitating local delivery, Defra should:

- ensure local authorities have sufficient and timely funding certainty to allow longer-term planning;
- use monitoring information on the biodiversity units market to identify any differential regional impacts of the policy, such as local authorities less engaged with the policy, and target support to them; and
- be proactive in co-ordinating opportunities for best practice to be shared and adopted quickly, particularly among local authorities.

24 On determining impact, Defra, working with Natural England, should:

- publish information annually – for example, within Defra's annual progress reports on the Environmental Improvement Plan – on what statutory BNG has delivered so far towards the stated policy objectives, outcomes and benefits; and
- identify the contribution that they expect statutory BNG to make to national biodiversity targets, and how they will measure the progress statutory BNG makes to these objectives.