



## SAVING NATURE OR REINVENTING THE CITY?

### A SHORT BRIEF ON THE UK GOVERNMENT'S RESPONSE TO THE CONSULTATION ON BIODIVERSITY NET GAIN REGULATIONS AND IMPLEMENTATION

On 21 February 2023, the UK government published its response<sup>1</sup> to the public consultation on Biodiversity Net Gain (BNG) regulations. It confirmed that mandatory Biodiversity Net Gain requirements will enter into force in November 2023,<sup>2</sup> after which developers will be required to deliver a 10% Biodiversity Net Gain when building new housing, industrial or commercial developments, as a condition of planning permission. Exemptions are foreseen for householders' applications and habitats smaller than 25 metres squared.

BNG will be measured using Defra's biodiversity metric, and habitats will need to be secured for at least 30 years. Beyond that period, the government will consider a range of options to incentivise the retention of biodiversity gains, such as tax incentives, investment bonds and other financial instruments, and the sale of credits.

Natural England will be appointed as the Biodiversity Gain Site Register Operator, whose registry will open in November 2023. It will have discretion over whether to apply fines in case of non-compliance.

#### BIODIVERSITY OFFSET MARKET

Developers will be required to demonstrate how they are offsetting 110% of their destruction, with biodiversity metric trading rules requiring that any habitat affected within the boundary is replaced on a 'like for like' or 'like for better' principle.<sup>3</sup>

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<sup>1</sup> UK government, Response to the consultation on biodiversity net gain regulations and implementation <https://www.gov.uk/government/consultations/consultation-on-biodiversity-net-gain-regulations-and-implementation/outcome/government-response-and-summary-of-responses#government-response-part-1-defining-the-scope-of-the-bng-requirement-for-town-and-country-planning-act-1990-development>

<sup>2</sup> with the exception of small sites, that have until April 2024 to comply with the new regulations, and nationally significant infrastructure projects, for whom BNG will be mandatory from November 2025 onwards.

*Small sites are defined for the purpose of the BNG exemption as:*

*(i) For 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.*

*(ii) 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.*

UK government, Response to the consultation on biodiversity net gain regulations and implementation

<sup>3</sup> While "like for like" requires developers to replace destroyed habitats by biodiversity units of the same type, "like for better" by contrast means that the habitats destroyed can be replaced either by the same type or by 'any habitat from a higher distinctiveness band.' Like for like is mandatory for habitats of high or very high distinctiveness, while like for better is allowed for habitats of, medium, low and very low distinctiveness. Source: Biodiversity Metric 3.1 - User Guide, <http://nepubprod.appspot.com/publication/6049804846366720>

Offsetting can be delivered on site, off site, or via the purchase of statutory credits from the government, if the required biodiversity net gains cannot be achieved on-site or through the off-site market.

Developers who exceed their net gain target will be able to sell their excess credits to other developments off-site, provided additionality can be proven. These excess credits will be sold to developers, in partnership with local authorities, through a habitat bank, a broker or a trading platform. In fact, any landowner or manager will be allowed to create or enhance habitats for the purpose of selling biodiversity units.

The price of units will be determined through negotiations between private buyers and sellers and is likely to vary by habitat type and location. As for statutory credits, the government is still assessing whether to vary the price by habitat type; it will publish an indicative price in May 2023, set to be intentionally uncompetitive with the market.

**Somewhat counterintuitively, biodiversity seems thus set to be the first compliance nature market to be launched – a crucial feature to generate demand at scale - before carbon offsetting,** even though the latter has been in existence for far longer as a voluntary market. One of the key lessons from voluntary carbon offset markets is that the only way to generate demand at scale and create an active market is through regulation mandating the use of the related credits; Kyoto CDM credits for example only saw significant demand when they were allowed in the EU ETS during phase 2. However, carbon offsetting needs first to clean up its image and damaged credibility before making a lobby push at becoming a compliance market, whereas biodiversity is newer and fewer people are paying attention. This explains recent initiatives aimed at devising high level principles and certifications for carbon sequestration and offsetting. Once these principles are adopted and barring any new high-level scandal, it is a safe bet that private lobbies will renew their push to make carbon offsetting mandatory and/or have it allowed within compliance carbon cap and trade schemes.<sup>4</sup>

It is worth noting that **no binding measures are foreseen to prioritize curbing destruction over restoration, nor any cap on the allowed use of offsetting within Biodiversity Net Gain policies.** The absence of these features will however predictably result in promoting destroying-to-restore over curbing destruction, when science says we need to focus on the latter, as offsetting is far more profitable than curbing destruction.

#### HABITAT BANKS

The biodiversity credits can be created before they are used and can be saved – “banked” in market jargon - with no time limit, until they are allocated to a development. The government also foresees the creation of habitat banks, claiming that habitat banking will enable delivery of larger, more strategic sites for nature.

It is worth noting that **the allowance for banking and creation of habitat banks is not necessary – and even potentially detrimental - for conservation purposes, but is indispensable to create a**

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<sup>4</sup> Banks are also lobbying other governments to make their biodiversity market schemes become compliance markets, such as Australian bank Commbank lobbying the Australian government to put in place regulations helping to drive demand  
Carbon Pulse, Bank says govt regulations needed to ensure well-functioning voluntary biodiversity credit market, 22 March 2023  
[https://carbon-pulse.com/196595/?utm\\_source=Biodiversity+Pulse&utm\\_campaign=2dd2b877fd-Biodiversity+Pulse+Weekly%3A+23032023&utm\\_medium=email&utm\\_term=0\\_e95c326d05-2dd2b877fd-110407746](https://carbon-pulse.com/196595/?utm_source=Biodiversity+Pulse&utm_campaign=2dd2b877fd-Biodiversity+Pulse+Weekly%3A+23032023&utm_medium=email&utm_term=0_e95c326d05-2dd2b877fd-110407746)

**market** where speculators can bet on the future price of credits until they are being used. Creating a market requires transforming restoration actions from a tailor-made projects aimed at compensating for a specific destruction taking place in a specific place, to a standardised generic intervention; this way, the restoration action can be performed before the destruction takes place, and the related credits can be issued and freely traded until they are being used.

**Beyond habitat banking, other market features such as allowing “like for better” offsetting (i.e., allowing under certain conditions offsetting with a different type of habitat/species than that destroyed) and allowing off-site offsetting are also key to transform restoration into a standardised tradable financial asset. Yet, these features are also known to create far greater risks for environmental integrity,<sup>5</sup> as restoration is no longer destruction/site specific but relies instead of weak equivalences, in order to become generic and “tradable.”**

#### STACKING & OTHER NATURE MARKETS

As stated in the Government’s response, “*nature markets include carbon sequestration and flood alleviation. Stacking is when multiple credits or units from different nature markets are sold separately from the same activity on a piece of land.*<sup>6</sup>”

*“Land managers will be able to sell both biodiversity units and nutrient credits from the same nature-based intervention, for example the creation or enhancement of a wetland or a woodland on the same parcel of land. Land managers should not sell credits for other ecosystem services (such as carbon credits) from the same nature-based intervention if they are also selling biodiversity units and/or nutrient credits.”<sup>7</sup>*

*“Nutrient mitigation makes sure a new development does not add to nutrient loads in water bodies where protected sites (or Habitats Sites) are in ‘unfavourable condition’ as a result of the polluting effects of excessive nutrients. Nutrient mitigation is also known as nutrient neutrality. You can create nutrient credits by reducing or capturing nutrients that would otherwise end up in protected water bodies.”<sup>8</sup>*

**The UK government thus announces the future launch of not one but three new ‘nature’ markets that will come in addition to carbon sequestration: biodiversity offsetting, flood alleviation and nutrient mitigation.** The latter is defined as **a market to trade permits to pollute rivers**, that will most likely come instead of tighter environmental regulations preventing UK water companies from discharging raw sewage in rivers and the sea.<sup>9</sup>

Equally problematic, **the allowance for stacking up revenues from the sale of several “services” from the same piece of land and for the same intervention will significantly increase the risk of**

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<sup>5</sup>These features are indeed not new at all and were in fact part of the European Commission 2010 Habitat Banking proposal. See Hache F, 50 shades of green part 2: the fallacy of environmental markets, Green Finance Observatory, 2019

<https://greenfinanceobservatory.org/wp-content/uploads/2019/05/50-shades-biodiversity-final.pdf>

<sup>6</sup> UK Government, Guidance Combining environmental payments: biodiversity net gain (BNG) and nutrient mitigation

<https://www.gov.uk/guidance/combining-environmental-payments-biodiversity-net-gain-bng-and-nutrient-mitigation>

<sup>7</sup> UK Government response, ibid

<sup>8</sup> UK Government, Guidance Combining environmental payments: biodiversity net gain (BNG) and nutrient mitigation

<sup>9</sup> The Guardian, Water firms discharged raw sewage into English waters 400,000 times last year, 31 March 2021

<https://www.theguardian.com/environment/2021/mar/31/water-firms-discharged-raw-sewage-into-english-waters-400000-times-last-year>

pricing out and displacing UK agriculture,<sup>10</sup> as well as creating a speculative price bubble on farmland and forest land.

#### SELLING ADDITIONAL CREDITS

It is also foreseen that land managers will be able to sell more biodiversity units or nutrient credits for the same land after they achieve their planned habitat condition, provided they are able to make further enhancements.<sup>11</sup>

Draft legislation for the statutory credit scheme is due to be published later in 2023.

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The choice of market-based solutions for biodiversity and pollution over tighter environmental regulations that have a far superior track record<sup>12</sup> and fewer conceptual issues does not make sense, if the primary goal is to address our environmental crises. Such a choice is however consistent with prioritizing short term economic growth and helping the City capture a share of the alleged \$10 trillion annual business opportunities in carbon and biodiversity finance,<sup>13</sup> by positioning the UK as a global hub for the new environmental asset class.

This latter goal would also explain the inclusion of **market features designed to favour speculators but unnecessary or detrimental from an environmental perspective. There is for example no need to allow the banking of credits, nor secondary market trading.** If the goal was restoration / offsetting, issuing credits and selling them once to end-users wishing to “offset” their destruction would be sufficient. Allowing buyers to store and resell their credits will by contrast mostly benefit speculators wishing to make a quick profit by betting on the future price of credits, but in doing so, will make prices far more volatile and thus weaken the price signal.

The UK government’s recent announcement of a partnership with France and Gabon to work on a biodiversity certificates market further suggests future international linkages between UK’s forthcoming biodiversity offset market and others schemes.<sup>14</sup> **This partnership must be closely monitored in our opinion, as it may allow destruction in the UK to be “offset” abroad where land is much cheaper rather than at home. Such a feature would boost incredibly the profitability of biodiversity offsetting, but it would weaken further its environmental integrity, while promoting green neo-colonialism.**

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<sup>10</sup> WalesOnline, The devastating impact carbon offsetting is having on Welsh farming communities, December 2021

<https://www.walesonline.co.uk/news/wales-news/carbon-offsetting-companies-uk-calculator-22464381>

BBC, Carbon offset: Fears tree plant schemes could price out farmers, April 2022

<https://www.bbc.com/news/uk-wales-61020316>

<sup>11</sup> *“To do this, you need to calculate the baseline for BNG and nutrient mitigation once the original planned habitat works have been completed. For example, if you have an arable field and you received a grant to create a modified grassland, you could improve the habitat to a grassland managed for conservation. This enhancement could then be sold as biodiversity units and nutrient credits.”*

<https://www.gov.uk/guidance/combining-environmental-payments-biodiversity-net-gain-bng-and-nutrient-mitigation>

<sup>12</sup> Green Finance Observatory, UK’s forthcoming Biodiversity Unit Market, trading permits to destroy nature as a way to protect it?

<https://greenfinanceobservatory.org/wp-content/uploads/2022/06/UK-Biodiversity-Unit-Market-2.0-1.pdf>

Open letter: 119 experts call to protect nature from the “nature positive economy”

<https://greenfinanceobservatory.org/wp-content/uploads/2022/11/openletternaturepositive-final-3.pdf>

<sup>13</sup> World Economic Forum, The business of protecting biodiversity – and why it’s your business, 29 September 2022

<https://www.weforum.org/agenda/2022/09/the-business-of-protecting-biodiversity-and-why-it-s-your-business/#:~:text=Over%20the%20next%2010%20years.circular%20economy%20solutions%20in%20the>

<sup>14</sup> “France, the United Kingdom and the Gabon launch in Libreville an intergovernmental platform for the foreshadowing of a market biodiversity certificates.” <https://www.elysee.fr/admin/upload/default/0001/14/4f5e2950b1066def03e64988f7c24bd7aa18834a.pdf>

**The government’s intention to deregulate UK financial markets in order to “revive the City of London,”<sup>15</sup> as the Financial Times put it, also confirms our interpretation.** As stated in this recent FT article, many in the City “*hope that a revamped regulatory regime tilted more towards risk taking will allow London to better compete with the US and Asia and reverse a gradual erosion of its pre-eminence as a financial centre in recent years. For the government, there is the added need to demonstrate, both to an increasingly sceptical electorate and a City that was worried about the impact from the start, that leaving the EU has brought benefits*<sup>16</sup>.”

**For all the above reasons, we understand the push to create UK nature markets to be not so much about saving nature, as a desperate attempt at generating growth and reinventing the City in the wake of Brexit.**

**The fact that biodiversity offsetting will be a compliance rather than a voluntary market is a game changer, as it will mean massive demand guaranteed by the government for the new credits, and therefore a complete change of scale compared to voluntary offset markets.** Carbon offsetting for its part must first clean up its damaged credibility before pushing to become as well a compliance market. This explains the various initiatives promoting certification and integrity principles.

Incidentally, **the shift from voluntary to compliance markets for offsets and the related government-guaranteed demand for offset credits can be seen as a new variation of derisking,** and a further reconceptualization of the State along the lines of the Wall Street consensus<sup>17</sup> applied to environmental policies.

**These markets risk creating a speculative bubble on forests and farmland and pricing out British farmers; the cost of these credits will also likely be passed on to British end consumers.**

**The creation of new untested markets far more exposed to scientific and regulatory risk than any traditional asset class in a context of financial deregulation might also create significant risks for UK investors and taxpayers.** The last financial crisis and subsequent bank bailouts is a cautionary tale against the temptation of short-term artificial growth at the expense of stability.

Lastly and most importantly, the future biodiversity offset market fails to address the well-documented environmental integrity issues of biodiversity offsetting.<sup>18</sup> We find it **unconscionable to deliberately promote ineffective policy tools for a few extra points of GDP, but at the cost of environmental integrity** and failing to address the 6<sup>th</sup> mass extinction of species.

We hope that UK citizens will get a chance to participate in an informed public debate about these crucial choices for their future before they become law.

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<sup>15</sup> Financial Times, More risk, fewer rules: the plan to revive the City of London, February 2023 <https://www.ft.com/content/477318a9-5b05-4305-9e0d-f605431692db?sharetype=blocked>

<sup>16</sup> Financial Times, More risk, fewer rules: the plan to revive the City of London, February 2023 <https://www.ft.com/content/477318a9-5b05-4305-9e0d-f605431692db?sharetype=blocked>

<sup>17</sup> Gabor, Daniela, 2020. "The Wall Street Consensus," SocArXiv wab8m, Center for Open Science. <https://ideas.repec.org/p/osf/socarx/wab8m.html>

<sup>18</sup> Hache F, 50 shades of green part 2: the fallacy of environmental markets, Green Finance Observatory, May 2019 <https://greenfinanceobservatory.org/wp-content/uploads/2019/05/50-shades-biodiversity-final.pdf>