

 <b>Regulatory Policy Committee</b>	<b>Opinion</b>	
<b>Impact Assessment (IA)</b>	Biodiversity Offsetting	
<b>Lead Department/Agency</b>	Department for Environment, Food and Rural Affairs	
<b>Stage</b>	Consultation	
<b>IA Number</b>	DEFRA1126	
<b>Origin</b>	Domestic	
<b>Expected date of implementation (and SNR number)</b>	1 October 2013	
<b>Date submitted to RPC</b>	30/08/2013	
<b>RPC Opinion date and reference</b>	03/10/2013	RPC13-DEFRA-1840
<b>Overall Assessment</b>	<b>RED</b>	
<b>RPC comments</b>		
<p>The IA is not fit for purpose. The IA does not contain a clear OITO assessment and we are unable to determine the robustness of the position presented within the IA. The IA must explain why the policy is considered to be out of scope of OITO, particularly in light of the potential familiarisation costs which have been identified in the IA. We also note that the IA needs to provide evidence from the recent pilots to assess the likely effect of the monitoring and enforcement practices of Local Authorities.</p>		
<b>Background (extracts from IA)</b>		
<b>What is the problem under consideration? Why is government intervention necessary?</b>		
<p>Without protection, habitat in England is being lost, fragmented and degraded as biodiversity suffers from market failure. As an unpriced externality it tends to be neglected in market-based transactions and is therefore over consumed and under produced. The planning system attempts to counter this for the impacts of development on biodiversity, but this is not always effective and can also create delays and uncertainty which impose costs on developers. A regulated biodiversity offsetting market offers a potentially efficient solution to both problems, helping to ensure biodiversity issues are dealt with more transparently and with greater certainty in the current planning system, to encourage growth and improve the environment.</p>		
<b>What are the policy objectives and the intended effects?</b>		
<p>The proposals intend to improve the delivery of planning policy requirements relating to biodiversity in a cost-effective way, by:</p> <ul style="list-style-type: none"> <li>• providing a potentially faster and more consistent approach to assessing the impact of the development on biodiversity;</li> <li>• agreeing the mitigation and compensation requirements;</li> <li>• and demonstrating compliance using a standardised system.</li> </ul>		
<p>It is hoped that greater certainty about the use of offsetting will allow developers to routinely consider (<i>sic</i>) offsetting as part of their development planning, and lead potential offset suppliers to come forward. A strategic approach to offsets will allow them to be sited in places that increase the number, scale and connectivity of diverse habitats in England.</p>		

**Identification of costs and benefits, and the impacts on business, civil society organisations, the public sector and individuals, and reflection of these in the choice of options**

*Level of enforcement by Local Authorities.*

The IA explains that the amount of biodiversity that will be offset under the proposal is expected to be the same as is achieved under the counterfactual, as the level of monitoring and enforcement will remain unchanged. Estimates provided in the IA suggest that of the approximate 6,000 hectares of biodiversity which are lost to development per year, only 300 are currently compensated. However, the IA also says that an objective of the proposal is to "*ensure that the number of biodiversity units lost at a development site is equally matched by the number of biodiversity units replaced at an alternative site*" (page 11). Achieving this objective would appear to require a change in the level of monitoring and enforcement and, as a result, an increase in the amount of biodiversity that will be offset. This suggests that such a change would lead to increased costs to developers. Therefore, if the objectives of the proposal are to be met, it appears that the costs to business, in the IA, may have been significantly underestimated. The IA needs to draw on evidence from the recent pilots to assess the likely effect of the monitoring and enforcement practices of Local Authorities.

*Comparisons of Net Present Values (NPVs).*

We note that the estimated NPVs for options, other than the preferred one, appear to provide higher benefits to society. The IA should, in relation to the NPV figures, provide an explanation as to why the preferred option has been chosen.

**Comments on the robustness of the Small & Micro Business Assessment (SMBA)**

The proposals regulate business and are intended to come into force after 1 April 2014 and therefore the SMBA is applicable.

The SMBA is sufficient and explains how, if a regulatory option is selected, this will affect the small and micro businesses. A more complete assessment will be undertaken as part of the final Impact Assessment.

**Comments on the robustness of the OITO assessment.**

The IA summary sheet shows the proposal to be out of scope of OITO, presumably, as the preferred option is described as permissive. However, as all of the options recognise that business will have to undertake familiarisation of the offsetting policy, with an estimated cost of £2m, this does not appear to be the case. As the IA does not contain an OITO assessment, we are currently unable to determine the robustness of the position in the IA. The IA must include an OITO section to discuss whether the policy is in or out of scope.

**Signed**



**Michael Gibbons, Chairman**

