



Department  
for Environment  
Food & Rural Affairs

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**Your ref:**  
**Our ref:** RFI 7004  
**Date:** 3 December 2014

Dear [REDACTED]

## REQUEST FOR INFORMATION: EU CONSULTATION ON NO NET LOSS

Thank you for your request for information, which we received on 10 November, about Defra's response to the consultation on No Net Loss [of biodiversity]. As you know we have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

I enclose a copy of the information you requested.

In keeping with the spirit and effect of the EIRs, and in keeping with the government's Transparency Agenda, all information is assumed to be releasable to the public unless exempt. Therefore, the information released to you will now be published on [www.gov.uk](http://www.gov.uk) together with any related information that will provide a key to its wider context. Please note that this will not include your personal data.

I attach Annex A, which explains the copyright that applies to the information being released to you.

I also attach Annex B giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact the address below.

Yours sincerely,

[REDACTED]  
**Defra FOIA and EIRs Team**  
[InformationRequests@defra.gsi.gov.uk](mailto:InformationRequests@defra.gsi.gov.uk)



## Annex A

### Copyright

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## Annex B

### Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 18 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to [REDACTED] Head of Information Standards, Area 4D, Nobel House, 17 Smith Square, London, SW1P 3JR (email: [requestforinfo@defra.gsi.gov.uk](mailto:requestforinfo@defra.gsi.gov.uk)) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our [website](#).

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner for a decision. Please note that generally the Information Commissioner cannot make a decision unless you have first exhausted Defra's own complaints procedure. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF



Department  
for Environment  
Food & Rural Affairs

helpline@defra.gsi.gov.uk  
[www.gov.uk/defra](http://www.gov.uk/defra)

Dear [REDACTED]

16 October 2014

You emailed on 6 June about the Commission's consultation on No Net Loss, including a substantial section on biodiversity offsetting, on which you seek comments by a revised deadline of 17 October.

No Net Loss already features heavily as a UK policy objective. In England, for example, all public bodies are under a statutory duty to conserve biodiversity and the Government's recent White Paper said that:

"We will move progressively from net biodiversity loss to net gain, by supporting healthy, well-functioning ecosystems and establishing more coherent ecological networks. Our 2020 mission is to halt overall biodiversity loss, support healthy well-functioning ecosystems and establish coherent ecological networks, with more and better places for nature for the benefit of wildlife and people. "

As a way of encapsulating those goals, the current Government has also said publicly that this should

"be the first generation to leave the natural environment of England in a better state than it inherited."

The overall goal, then, could not be clearer. The real question is whether the ideas floated in your consultation offer the best way of achieving that overall goal. On offsetting, we suspect that England has as much experience as most member states, having run our own consultation last year on biodiversity offsetting and having also operated six offsetting pilots from 2012-2014, on which an independent report is now being produced. In the light of that report and the responses to our consultation, we shall be considering next steps.

Until then, it is difficult for us to answer the fairly focused questions in your consultation. Rather than attempting to complete the questionnaire, therefore, I am sending this letter in order to make some general points which I trust you will find helpful and which I hope you will accept as our response. We would be happy to meet to talk you through these points

in more detail, should you find that helpful, or indeed to attempt your questionnaire at a future date when our own policy position is more settled.

The first point is that, whilst offsetting is an interesting concept, there is at present no real consensus over its use, as well as significant technical gaps in devising the mechanism.

For example, evidence suggests that an offsetting system would need legal underpinning if people were to have confidence that the offsets would be maintained over the longer term. Separately we have been looking at a possible way of doing this – by means of ‘conservation covenants’ - but that legislation is not currently in place.

There are also a number of detailed rules which would need to be settled before any offsetting system could be put in place and on which we suspect there is little consensus at present. For example: who would operate the metric and how would consistency be ensured; how much trading up or down would be allowed; would there be restrictions on where an offset could be located; how would we ensure that offsets do not have unintended downsides (for example, pre-empting prime farmland and so increasing ‘food miles’); how long would they need to be maintained; could they be combined with other schemes (e.g. carbon offsets) for which the landowner might already be being paid.

We also need to be able to reassure developers and infrastructure providers that offsetting would not impose any unreasonable new burden on them which might impede their ability to support the economic recovery. We were slightly alarmed, for example, by the background to your question 5.4 which said that “*detailed assessments are expensive and time consuming and could be seen as an additional burden*”

We would also emphasise the importance of national differences in the way offsetting is put into effect. For example, we commissioned some research on the German system and found that it is quite unlike what we had in mind. This illustrates that, if it is to work, offsetting must fit with the planning system of the particular country – the German approach would not succeed in the English spatial planning system and vice-versa. Spatial planning remains, of course, a member state responsibility and there are wholly reasonable variations between countries – in England, for example, we use a three-step mitigation hierarchy.


In summary, we do not think that offsetting is yet sufficiently advanced to be capable of supporting a No Net Loss strategy in the way your consultation seems to contemplate and we think that a standard EU-wide model would certainly not succeed.

Once one goes beyond offsetting, there is a risk of duplication and contradiction (with existing EU legislation). We think that, rather than launching a separate initiative, it would be better to allow member states to use existing mechanisms in ways which suit their local circumstances.

For example, a new CAP has just been agreed which covers support to the agriculture sector. We think that is the place to set out expectations on agricultural producers, rather than through an additional NNL framework. It seems that you partially accept this point as you suggest excluding air pollution on that sort of reasoning (though you suggest including water pollution). Similarly, while we agree that it is important to make sure relevant sectors are covered, we think this is likely to be better tackled with bespoke interventions for each sector, rather than a uniform approach. Similarly we think it would be counter-productive to try and retrospectively add no net loss into the SEA, EIA, and Environmental Liability directives at this stage.

We are also concerned that some of the actions contemplated would raise issues of subsidiarity – for example if your proposals sought to replicate the degree of EU control over N2K sites into the wider countryside. On that point, we note that although the Biodiversity strategy was approved by member states, the individual actions which flow from it – including that of the Commission producing No Net Loss proposals by 2015 – have not themselves been endorsed by member states.

Yours sincerely



Biodiversity Programme  
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