

Exemptions to biodiversity net gain

Lead department	Department for Environment, Food and Rural Affairs
Summary of proposal	The proposal sets out six exemptions to the requirement for delivery of 10 per cent biodiversity net gain for building projects.
Submission type	Impact assessment (IA) – 26 June 2023
Legislation type	Secondary legislation
Implementation date	November 2023
Policy stage	Final
RPC reference	RPC-DEFRA-5284(1)
Opinion type	Formal
Date of issue	27 July 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA's assessment of direct impacts on business is proportionate. There are areas for improvement in this and the wider cost benefit analysis, in particular on wider impacts.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulation provision (OUT)	Qualifying regulation provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	£-16.0 million	£-16.0 million (2019 prices, 2020 pv)
Business impact target (BIT) score	£-79.9 million	£-80.0 million
Business net present value	£137.5 million	
Overall net present value	£-394.7 million	

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

RPC summary

Category	Quality ²	RPC comments
EANDCB	Green	The IA's assessment of direct impacts on business appears to be based upon proportionate evidence and data. The IA would benefit from justifying why all the benefits from exemption 6 can be assumed to accrue directly to business.
Small and micro business assessment (SaMBA)	Green	The IA explains that the exemptions are largely aimed at small-scale projects, many of which are expected to be undertaken by SMBs. SMBs might, therefore, be expected to particularly benefit from this proposal.
Rationale and options	Satisfactory	The proposal discusses the rationale for the proposed exemptions but would benefit significantly from clarifying their relationship to overall BNG policy objectives. The IA usefully discusses options considered but would benefit from providing information on alternative <i>de minimis</i> thresholds considered.
Cost-benefit analysis	Good	The IA provide a reasonably full monetised assessment of societal impacts, including impacts on the environment, businesses, households and government. The IA includes a good sensitivity analysis.
Wider impacts	Weak	The IA monetises biodiversity impacts but would benefit significantly from a broader assessment of wider impacts, addressing any competition, innovation and significant distributional impacts.
Monitoring and evaluation plan	Satisfactory	The IA provides useful and fairly detailed information on the framework for evaluating BNG but would benefit from a greater focus on the specific impact of the exemptions.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

Summary of proposal

The Environment Act 2021 (The Act) provided powers to make biodiversity net gain (BNG) a condition for all developments in England consented under the Town and Country Planning Act 1990 (TCPA), unless exempted. From November 2023, projects must deliver a 10 per cent gain for biodiversity as measured by the Biodiversity Metric and demonstrated by an approved biodiversity gain plan. Secondary legislation would be used to set out policy details, including exemptions. The proposed exemptions are designed to streamline development processes, reduce disproportionate impacts on business/society and allow a more efficient delivery of BNG. The proposal involves six exemptions relating to:

1. minor developments;
2. developments affecting habitat areas below a '*de minimis*' (minimal) threshold;
3. householder applications;
4. the High Speed Rail Network;
5. developments undertaken exclusively for biodiversity enhancements; and
6. self-build and custom build applications.

The EANDCB of -£16.0 million consists primarily of the cost savings to business from exemptions 5 (accounting for about two-thirds of the overall business savings) and 6 (about one-third). The net present value (NPV) additionally allows for monetised savings to householders (exemption 3) and government (exemption 4). However, overall societal benefits are more than offset by estimated biodiversity benefits foregone (for example, lower habitat creation or enhancement).

EANDCB

The Department has provided sufficient evidence and analysis for the RPC to validate the EANDCB figure. There are, however, some areas for improvement in the analysis.

Non-monetised impacts

The IA does not quantify the impact of exemptions 1 and 2. Exemption 1 provides a temporary exemption for minor developments, meaning that BNG requirements would apply from April 2024 rather than November 2023. The IA explains how insufficient data on the proportion of change of land use relating to minor developments means that it is not possible to estimate the costs and benefits of this temporary exemption. However, the IA provides an indication of the likely scale of NPV impact, using exemption 3 as a benchmark. The IA would benefit from providing a similar assessment of possible scale of impact specifically in relation to impacts on business. On exemption 2, the *de minimis* threshold applies when development contains an area of existing low or medium distinctiveness habitat of less than a given threshold area (at 25m sq for area-based habitats and 5m for linear habitats). The IA explains that a similar lack of data on the number of developments containing habitat below the *de minimis* threshold means that it is not possible to monetise the impact. Although the IA explains why the impact is expected to be

small, the IA would benefit from discussing indications of scale of impact, as provided for exemption 1.

Differentiating between impacts on individuals, government and businesses

The IA monetises the impacts of exemptions 3 and 4. The cost savings of exemption 3 are correctly assessed as benefits to individuals/householders. On exemption 4, the IA states that Defra are exempting future HS2 future schemes up to Manchester and Leeds from biodiversity net gain, including the Crewe – Manchester scheme and HS2 East. Exemption 4 provides for HS2 Ltd to deliver its BNG commitments more flexibly and cheaply, including through purchase of units in the biodiversity market. Although this is ostensibly a cost saving to a business, the IA treats this as a cost saving to government or the taxpayer, given that HS2, including meeting BNG commitments, is fully funded by the government/taxpayer. This treatment appears to be appropriate.

The IA acknowledges that exemption 6 covers a wide spectrum of projects, from where individuals are involved in building or managing the construction of their home from beginning to end, to those where individuals commission their home but the home is built ready for occupation. It appears that the assessment treats all of these projects in the same way for business impact target purposes, i.e. the direct costs and benefits fall on business. The IA would benefit, where possible using available data, from identifying the proportion and BNG significance of projects where “...individuals are involved in building or managing the construction of their home from beginning to end...” and discussing whether the direct impact falls on the individual or the businesses involved in the construction. The IA could also explain more clearly how this exemption is differentiated from exemption 3.

Level of detail in presentation

The IA would benefit from providing the same level of detail on the calculation of the benefit of exemption 6 as it does for the cost of the exemption and the costs and benefits of exemption 5.

SaMBA

Small and micro businesses (SMBs) are estimated to comprise about 99.5 per cent of businesses potentially affected by the proposal. The IA explains that the exemptions are largely aimed at small-scale projects, many of which would be expected to be undertaken by SMBs. SMBs might, therefore, be expected to particularly benefit from this proposal.

Medium-sized business considerations

The IA discusses briefly the impact on medium-sized business (MSBs), concluding that they would also benefit from the proposal. The IA would benefit from disaggregating the figures for medium and large businesses.

Rationale and options

The IA provides a brief but sufficient explanation of the rationale for intervention. In the absence of the proposal, provisions in the Environment Act would be applied to types of residential and non-residential development to which government did not intend to apply it. The aim is to reduce disproportionate burdens on business and avoid “government policy failure”. The latter would benefit significantly from greater explanation. The IA would benefit from more specifically addressing how policy objectives would not be achieved without the exemptions or how the exemptions would not jeopardise the attainment of the policy objectives as originally formulated.

On options, the IA usefully summarises exemptions considered as part of policy development since 2018, such as brownfield sites, and explains why they have not been taken forward. The IA explains that choice of the *de minimis* threshold is based on consultation responses and consideration of case studies. The IA could usefully provide some further details of these, and alternative thresholds considered.

Cost-benefit analysis

Evidence, data and assumptions

The IA’s use of data from recent BNG IAs, economic studies on BNG and evidence from discussion with stakeholders is proportionate. The IA helpfully addresses limitations in the data and provides a detailed sensitivity analysis, varying key assumptions. There are some areas where further supporting detail on the central estimate would be useful, such as the assumed 10 per cent of offsite developments undertaken exclusively for biodiversity enhancements that require their own planning permission used to calculate the cost savings under exemption 5. In relation to exemption 4, although the IA notes that BNG delivery costs have not been verified by HS2 Ltd, the assessment would benefit from providing any feedback from industry on the realism of the estimates, or at least describing further the consultation with industry in this area.

Methodology and discussion around the negative NPV

As noted above, the IA estimates a negative NPV, reflecting a significant monetised cost arising from BNG foregone because of the exemptions. The calculations involve values for the loss of natural capital, biodiversity and ecosystem services used in previous BNG IAs, themselves taken from ONS ecosystem accounts that draw upon hedonic pricing methods. The IA acknowledges these are imperfect proxies and includes this area in its sensitivity analysis.

The IA usefully addresses the negative NPV and explains that it should be seen in the context of the overall BNG policy. The IA would benefit from explaining further how BNG objectives will still be achieved at an aggregate level and, even where this is the case, discuss the impacts of the exemptions at a regional level. However, the IA’s sensitivity analysis appears to report that even a combination of the most favourable sensitivities still results in a negative NPV. The IA would benefit from discussing the robustness of the NPV figure further and/or the significance of any

other issues, such as distributional or affordability factors. This could include discussing the balance of costs and benefits for each exemption, for example of removing the effective requirement of “net gain upon net gain” (whereby developments undertaken exclusively for biodiversity enhancements are themselves required to deliver 10 per cent BNG) through exemption 5.

Wider impacts

The IA only briefly considers wider impacts, stating that there are no expected trade impacts and addressing the risk of developers breaking up land into smaller portions to take advantage of exemptions. The IA would benefit from explaining briefly why no trade impacts are expected and widen the discussion around incentives/possible unintended consequences, for example to cover encouraging development of sites of “low or medium distinctiveness”. As noted under ‘cost-benefit analysis’ above, the IA monetises the loss of BNG resulting from the exemptions. However, the IA would benefit from a broader assessment of wider impacts, proportionately addressing any competition, innovation and distributional impacts. The IA could also discuss how the impact of climate change is treated in this area, for example perhaps as part of the metric’s accounting for a variety of risk factors.

Monitoring and evaluation plan

The IA summarises the framework that Natural England and Defra have produced for the evaluation and monitoring of BNG and how this is being further developed. This usefully includes objectives, data that will be collected and research methods. The plan is relatively high-level, from the view of BNG as a whole; it would benefit from an additional focus on the specific impact of the exemptions and how this might link to a review of options for delivering the policy objectives. While the IA helpfully states that the exemptions will be monitored using planning data to measure the amount of habitat loss, the plan could provide further details on how this would be done and from discussing how anticipated cost savings to business will be evaluated. The plan would benefit from addressing difficulties in using planning data, for example in aggregation. It could also discuss how information could be gathered on the regional homogeneity of improvements and the balance of on-site, off-site and credit scheme activities.

Other comments

The IA helpfully refers to where it has used updated figures from the 2019 BGN IA.³ The IA could usefully provide an overview of legislation in this area, both primary (including how powers under this are being used) and secondary. This should also cover how the present IA sits relative to this 2019 IA and the 2022 IAs on the Environment Act and extending BNG to nationally significant infrastructure projects.⁴ In particular, it would be helpful to provide an overview of how impacts on business

³ RPC opinion ref: Defra-4277(2) ‘Biodiversity Net Gain’, issued 6 June 2019.

⁴ RPC opinion ref: Defra-4439(2) ‘The Environment Act 2021’, issued 31 March 2022, and Defra-5136(2) ‘Biodiversity net gain for Nationally Significant Infrastructure Projects (NSIPs)’, issued 22 September 2022.

of BNG requirements and associated exemptions are to be scored for business impact target purposes.

Regulatory Policy Committee

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A committee member did not participate in the scrutiny of this case to avoid a conflict of interest.