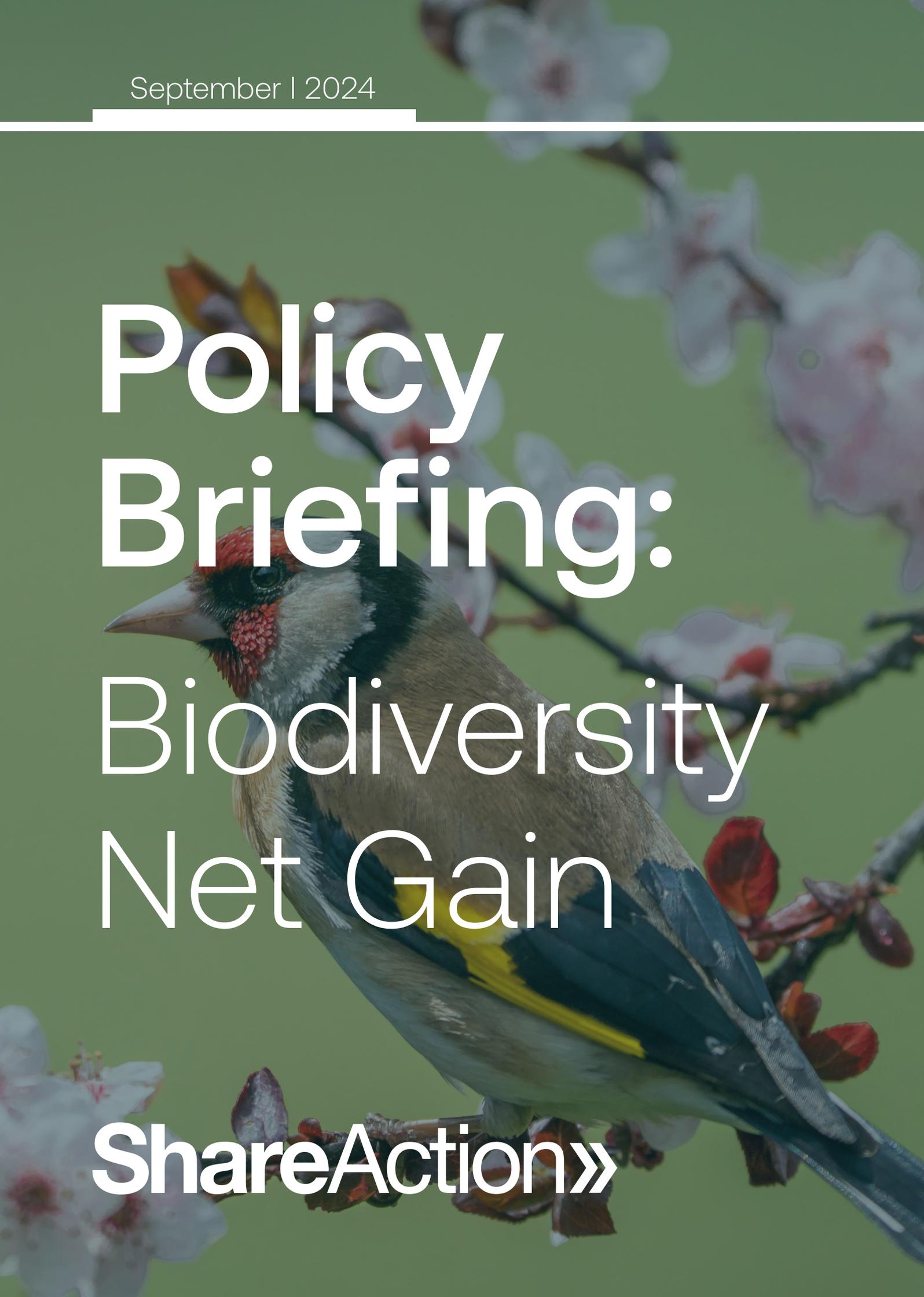


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A Goldfinch with a red face and yellow wing bars is perched on a branch with cherry blossoms. The background is a soft green with out-of-focus flowers.

Policy Briefing: Biodiversity Net Gain

ShareAction»

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Executive summary

Biodiversity loss in the UK has been occurring at a devastating rate and represents a significant material risk to the economy. In fact, a report by the Green Finance Institute (GFI) found that ecosystem degradation is at least as damaging to the economy, even more so, than the detrimental effects of climate change. This could result in a staggering 12 per cent loss of GDP as soon as 2030ⁱ. For reference, the 2008 global financial crisis and the COVID-19 pandemic resulted in five per cent and 11 per cent losses respectively.

Internationally, the UK has taken positive steps to respond to the urgency of the biodiversity crisis, signing the Kunming-Montreal Global Biodiversity Framework alongside 187 other governments at COP15 (Biodiversity).ⁱⁱ That framework commits to 23 global targets by 2030, reflecting the wide variety of causes and contributing factors to biodiversity loss, and the consequently wide range of actions required to address it.

Domestically, responsible land management and development are particularly crucial to tackling the crisis. The last government recognised this and acted to ensure that new developments not only better protect biodiversity, but actively contribute to a more nature-positive future. Since February 2024, Biodiversity net gain (BNG) has required new developments across England to deliver ten per cent net gain in biodiversity – an ambitious step in the right direction and the first legislation of this kind.ⁱⁱⁱ

However, the government's own impact assessment of the scheme found that, concerningly, the ultimate outcome of new developments could be no net loss of nature, rather than the

intended ten per cent gain, due to shortfalls in the current design of the framework. With 16 per cent of species currently at risk of extinction across Great Britain, ‘no net loss’ is simply inadequate and the policy must go further and faster to secure genuine benefits for nature.

The new government must therefore enhance and refine BNG to ensure it effectively achieves its aim to “secure a measurable improvement in habitat for biodiversity”, as stated by the Department for Environment, Food and Rural Affairs (Defra) in 2019. This is particularly critical given its ambition to build 1.5 million new homes and to overhaul the planning system.^{iv}

For example, several nature charities have called for the minimum net gain requirement to be raised above ten per cent, a recommendation that has been echoed by the Office for Environmental Protection (OEP).

Furthermore, when considering biodiversity conservation as an outcome, the ‘net gain’ measure is not sufficiently robust – ideally, a multi-factor metric should be used which includes other facets of biodiversity, such as habitat condition, connectivity, and species-specific indicators.

Finally, complications arise from the current administration of the scheme: Defra maintains overall responsibility for delivery, while Natural England oversees certain aspects (such as monitoring and evaluation), and local planning authorities (LPAs) lead on enforcement and ensuring delivery of the net gain.

This briefing explores these and other shortcomings in full, and sets out ShareAction’s specific policy recommendations for improving the scheme, as summarised below:

1. Ensure integrity and additionality by providing further guidance and investment for monitoring and enforcement carried out by LPAs.

2. Maintain robust monitoring and consistency for on-site and off-site gains. This could be achieved by moving on-site information to a central, publicly available, register and implementing independent monitoring and verification of biodiversity outcomes across both gain options.

3. Encourage greater ambition for nature enhancement by reframing ten per cent as a floor rather than a ceiling, preventing the sale of excess biodiversity units, and providing incentives for maintaining biodiversity beyond 30 years.

4. Expand on the list of irreplaceable habitats. Review the metric to ensure a diverse range of habitats are created and that destruction of irreplaceable habitats is limited to an absolute minimum.

The built environment and nature

Comprising buildings, roads and other infrastructure, the built environment is one of the four major value chains (alongside food, energy and fashion) which currently account for 90 per cent of human pressure on nature loss worldwide. Infrastructure alone makes up 25 per cent of this pressure^{vi}. However, the built environment depends heavily on the natural world. From direct benefits such as raw material provision to indirect services like climate regulation and cultural enrichment, ecosystems play a vital role in the construction, development and maintenance of our urban centres.

Cities, towns and other built-up areas often develop in ecologically rich areas where water, fertile soil, and diverse plant and animal life provide humans with vital natural resources for food, shelter and manufacturing. However, the expansion of infrastructure within these areas has led to the erosion of the same natural habitats that support such growth. With cities accounting for 80 per cent of global GDP^{vii}, the effect of this on both the economy and the planet has been dire: the decline in functional ecosystems costs the global economy more than \$5 trillion a year in terms of lost services from natureⁱ.

Urbanisation has also had a devastating effect on species loss through land conversion, and the built environment causes a number of severe indirect impacts on biodiversity, accounting for 29 per cent of the climate change impact on threatened species^{viii}. This trend is only accelerating, with two thirds of the world's population predicted to be living in cities by 2050^x.

Action is urgently needed to address the impact of the built environment on our natural world, and legislation should ensure that development works for, rather than against, nature.

Biodiversity net gain

Introduced under the Environment Act in 2021, the UK's biodiversity net gain (BNG) scheme is designed to halt and reverse the destruction of nature within England – specifically, to deliver the government's commitment to halt species decline by 2030 and ensure that species abundance in 2042 is greater than in 2022^x. The primary purpose of the legislation is to mandate that new developments must result in a ten per cent gain of biodiversity, in addition to the preexisting level.

The scheme became mandatory in February 2024, with the future inclusion of Nationally Significant Infrastructure Projects (NSIPs), such as motorways, planned for late 2025. Having already spent £52.4 million on the scheme, Defra expects to commit a total of £200 million by 2032. This is dwarfed by the predicted economic benefits of BNG over a ten-year appraisal period, which the government calculated at almost £9.6 billion (based on 2017 prices)^{xi}. However, several gaps and areas of concern within the policy mean that it is unlikely to deliver its intended benefits for nature.

The last government's ambition should be applauded, and the scheme holds real potential, but unless certain loopholes are closed, the scheme will ultimately facilitate further destruction of nature rather than achieving genuine gains. In May 2024, the National Audit Office (NAO) – the UK Government's independent public spending watchdog – published a report warning that enforcement risks, gaps in data, and market uncertainties threaten the long-term success of the scheme^{xii}. Furthermore, the OEP has recommended raising the net gain requirement above ten percent and introducing a strong system of governance^{xiii}, in light of research which found that 27 per cent of biodiversity units are at high risk of not being delivered due to gaps in governance^{xiv}.

The new government should address these weaknesses and embed greater ambition in law urgently to ensure that species decline in the UK is halted and reversed, in line with the Environment Act and our commitments to the Global Biodiversity Framework. The new Planning and Infrastructure Bill presents a ripe opportunity to do this.



On-site gains refer to biodiversity created within the red line boundary of a development site.

Off-site gains refer to biodiversity either created on land owned by the developer elsewhere, or purchased as biodiversity units from another land owner. Developers may only use off-site gains if they cannot meet the requirement through on-site gains alone.^v

Recommendations for policymakers

Ensure integrity and additionality by providing further guidance and investment for monitoring and enforcement carried out by Local Planning Authorities (LPAs)

Major risks to the scheme arise primarily from a lack of funding, inadequate ecological skills, ineffective enforcement mechanisms, and insufficiently comprehensive guidance.

LPAs are responsible for enforcing the scheme and ensuring new developments deliver the required net gain. However, only 37 per cent of LPAs benefit from in-house ecological expertise, while the remaining 63 per cent share resources with other LPAs, hire external consultants, or use Surface Level Agreements (SLAs) – resulting in the vast majority using the same consultant for their work^{xvi}. The previous government committed more than £9 million in funding for LPAs to recruit additional ecologists and fill the skills gap; this increased spending is simply not sufficient given the scale of the scheme and the long-term funding requirements for monitoring and enforcement. In fact, research has found that almost five times as much (£43 million) is needed each year to enable LPAs to deliver BNG^{xvi}.

A related significant risk is that the initial assessment as part of the scheme is performed by the developer itself, before being submitted to the LPA; without sufficient internal expertise, as highlighted above, it is incredibly difficult for LPAs to reliably assess if a plan is fit for purpose. The Chartered Institute of Ecology and Environmental Management (CIEEM) have strongly stressed the need to upskill planners and provide practical support to farmers and land managers, to help address this challenge^{xvii}.

This issue is compounded, however, by the current criteria for enforcement, which are far too high and require local councils to take action only if there is ‘serious harm to a local public amenity.’ Without the genuine threat of strict enforcement, net gains may fall well below the expected ten per cent with little to no consequence, setting a dangerous precedent and encouraging further under-delivery in the future. The new government must therefore introduce an effective, comprehensive and fully funded enforcement mechanism for maintaining good practice within the scheme; the bar for enforcement should also be lowered to ensure that any cases which fail to fully meet the net gain requirement are appropriately penalised and improved.

Furthermore, these inter-dependent issues highlight the need to ringfence funding specifically for BNG, both by developers and LPAs, and for different aspects of the scheme – for example, providing additional funding for monitoring and enforcement to ensure that the gains are consistently delivered over the next 30 years and do not suffer as a result of a poor financial year.

Recommendations: provide further ringfenced funding and guidance for enforcement and monitoring of the BNG scheme, to both LPAs and landowners. Recognise effective delivery of BNG and revise the wording of the legislation to lower the bar for enforcement by LPAs.

Through legislation, ensure that developers provide dedicated funding to ensure maintenance of on-site gains over 30 years. Invest in ecological skills development across the country.

Maintain robust monitoring and consistency across both on-site and off-site gains, by moving on-site information to a central, publicly available register and requiring independent monitoring and verification of biodiversity outcomes across both gain options

There are several discrepancies between the requirements for monitoring and evaluating on-site versus off-site units. For example, off-site units must be registered with Natural England, on a publicly accessible register, whereas information regarding on-site units can only be found through LPA portals; these are often not easily accessible and present a barrier to finding information about specific cases. If biodiversity net gain delivered via on-site gains is contributing to an increase in habitats, it should be reported centrally, as off-site gains are. Both gain types should therefore be made publicly available on the same register to ensure consistency and easy access to information.

Furthermore, the two types of gains are not monitored to the same standard. At the time of writing, on-site gains have no reporting requirements at all, while off-site gains are understood to be monitored through landowner self-reporting – which is still wholly inadequate to ensure net gain is delivered. Both types of gain should be independently monitored and evaluated to ensure that delivery of the scheme (and therefore, the ultimate objective of the legislation) is aligned with its planning, and that this can be evidenced and independently verified.

In addition, objective assessment by ecological experts is urgently required to avoid bias within the scheme. It is the regulator's responsibility to ensure a level of standardisation across the market, especially in such a complex area. Particular focus should be placed on improving the standards of on-site units, as assessment of the scheme so far has found that the majority of biodiversity net gain to date has been delivered via on-site units.

Recommendations: Ensure that both off-site and on-site gains are publicly available on an easily accessible register. Ensure consistency across monitoring of the units by setting equal expectations for both, including on reporting requirements, enforcement and monitoring.

Encourage greater ambition for nature enhancement by reframing the ten per cent requirement as a floor rather than a ceiling, preventing the sale of excess biodiversity units, and providing incentives for maintaining biodiversity beyond 30 years

Given the constraints and pitfalls of the policy highlighted in this briefing, ten per cent net gain should be the absolute minimum requirement. Indeed, ten per cent leaves little margin for error in measurement and delivery to ensure that habitats are left in a ‘measurably better state’ than they were before development, as is the ambition of the BNG policy. For that reason, a higher baseline is in fact needed to ensure a genuine gain is delivered – especially while other factors, such as enforcement, remain inadequate and risk reducing the real-world impact to ‘not net loss’, rather than actual gain, as the government’s own assessment highlighted.

Several councils have already proposed plans for higher-than-ten per cent gain, and some projects already deliver more than ten per cent. This ambition should be supported and highlighted as best practice. However, the current legislation states that developers ‘should not seek a higher percentage than the statutory objective of ten per cent [...] unless justified.’

Furthermore, where developments do exceed the requirement, the rules allow developers to sell any excess on-site gains as off-site gains to another development elsewhere. This effectively caps ambition for biodiversity net gain at ten per cent, and risks incentivising developers to overestimate their on-site units so they can generate more profit through sell-offs. Particularly given the aforementioned high bar for enforcement, this could encourage bad practice and may result in significantly less nature restoration than intended.

At the very minimum, Defra should start by explaining, in detail, the justification for framing ten per cent as the ceiling, rather than a baseline. Alongside championing the most successful and ambitious examples of BNG, bad practice should also be highlighted and addressed. For example, Defra should impose financial penalties on those providing false or misleading information in their assessments and reports. Defra should also ensure that the BNG scheme is continually reassessed and improved, including by publishing annual reports which review the scheme’s progress.

In addition, statutory credits should remain an absolute last resort for developers, and as such should be priced as high as possible to dissuade their use. Framing credits as ‘cost-effective’ for developers is the wrong approach and risks undermining the objectives of the entire scheme. Instead, engagement with landowners is essential to identify appropriate incentives for protection of the net gain over the next 30 years, or even in perpetuity.

Recommendations: Reverse the decision to allow selling-off excess credits in-tandem with a reversal of the requirement for LPAs to justify a higher than ten per cent increase. Identify and highlight cases of best practice, and increase the difficulty of obtaining statutory credits to dissuade developers from using them. Regularly assess the effectiveness of BNG through publicly available annual reports.

Expand on the list of irreplaceable habitats. Review the metric to ensure a diverse range of habitats are created and that destruction of irreplaceable habitats is limited to an absolute minimum.

Irreplaceable habitats (IH) are defined by the government as those which are very technically difficult to restore, recreate or replace once destroyed, due to their age, uniqueness, species diversity or rarity^{xviii}. These habitats are some of the most valuable in terms of biodiversity and make up a vital part of the UK's natural landscape. A full list is set out in the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024, and includes lowland fens, blanket bog and ancient woodland, among others^{xix}.

IH are exempt from the mandatory ten per cent net gain under the Environment Act as they are so difficult to recreate. Instead, developers must agree on a mitigation and compensation plan with their LPA, having explored all other reasonable development alternatives that would avoid loss of IH and justifying why these are not feasible. ShareAction welcomes the pragmatic exclusion of IH from mandatory BNG; however, the list provided is very short and risks ignoring additional crucial habitats, such as ancient hedgerows and floodplain meadows^{xx}.

It is also essential that BNG guidance reflects the fact that, by definition, lost IH can never be fully compensated, due to their complex – and inherently irreplaceable – nature. This requires a much more rigorous approach than the current provision for 'bespoke compensation to be agreed with the local authority,' as well as more transparent justification and explanation for this compensation.

Recommendations: Through the upcoming public consultation planned for late 2024, expand on the irreplaceable habitats list and provide further clarification on categorisation. Require a higher level of compensation for irreplaceable habitats than other areas covered under BNG, to avoid undermining their protection or providing an incentive for destruction. Exemptions to the scheme should be revised at regular intervals.

Conclusion

In summary, Defra's biodiversity net gain legislation has real potential to help halt and reverse nature loss across England, but the legislation must be improved urgently to ensure that genuine gains are delivered. It should also be recognised that a likely eventual outcome of no net loss is simply not ambitious enough in the context of the current biodiversity crisis. Furthermore, Defra needs to ensure that the scheme represents good value for money for taxpayers – considering the significant amount of government funding provided for BNG, the public should be able to benefit from the restoration and creation of accessible, diverse habitats in their local area.

Defra should seriously consider amending the legislation as recommended throughout this briefing to ensure that the scheme does not become a tick-box exercise for developers but lives up to the promise of its conception and steers England towards a nature positive future.

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ShareAction is an independent charity and an expert on responsible investment. We work to build a world where the financial system serves our planet and its people. We set ambitious standards for how financial institutions, through their investment decisions, can protect our planet and its people and campaign for this approach to become the norm. We convene shareholders to collectively push companies to tackle climate crisis, protect nature, improve workers’ rights and shape healthier societies. In the UK and EU, we advocate for financial regulation that has society’s best interests at its core.

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