

Environment Act 2021

Briefing Note

December 2021

1. Introduction

- The Environment Bill was introduced to Parliament on 15 October 2019. The Bill became an Act of Parliament on 9 November 2021.
- To date, one piece of secondary legislation has been enacted.
- Table 1 below shows some of the regulations that *may* be brought in by the Secretary of State (SoS).
- The remainder of this note introduces some of the key measures that will become statutory following the enactment of Statutory Instruments, and possible implications of this new legislation on policy and Local Plan making in England.

Table 1: Statutory instrument provisions of Environment Act

| Subject | Status |
|---|--|
| Office for Environmental Protection | Enacted (The Environment Act 2021 (Commencement No. 1) Regulations 2021) |
| Office for Environmental Protection | Remaining regulations for full functionality expected early 2022 |
| Environmental Targets | Consultation due to begin in February 2022. Draft SI must be laid before Parliament on or before 31 October 2022. |
| Particulate matter (“the PM _{2.5} air quality target”) | Draft SI must be laid before Parliament on or before 31 October 2022. |
| Species abundance | Draft SI must be laid before Parliament on or before 31 October 2022. |
| Powers to amend Habitats Regulations | Not to come into force <i>before</i> February 2022 |
| Local Nature Recovery Strategy Regulations | According to Defra’s July LNRS pilot lessons learnt report report , Defra will prepare for rollout of LNRSs swiftly following royal assent of the Environment Bill |

2. Biodiversity Net Gain

- Once the relevant statutory instrument provisions have been enacted (due to take place by the end of 2023), all new developments will be required by law to deliver a 10% increase in biodiversity (biodiversity net gain).
- This goes above the NPPF requirement for plans to deliver an unspecified level of BNG where possible.
- This only applies in England by amending the Town & Country Planning Act 1990 (TCPA) and is **likely to become law in 2023**. The likely timeframe for this is shown in Table 2 below.

Table 2: Likely implementation timeframe of mandatory BNG requirement for development

| Autumn 2021 | Spring 2022 | Spring 2023 | Winter 2023 |
|--|-------------------------------------|-------------|--|
| 9 Nov - Environment Bill gets Royal Assent | Government response to consultation | | Biodiversity net gain expected to become |

| | | | |
|--|--|--|-------------------------------------|
| Government consultation on BNG statutory instruments and regulations | | BNG site register and statutory credits sales platform go live | mandatory for all TCPA developments |
|--|--|--|-------------------------------------|

- BNG must be measured using a recognised biodiversity metric. Biodiversity Metric 3.0, launched by Natural England in July 2021, will provide a way to measure and account for losses and gains from development or land management changes.¹
- The 10% set out in legislation is mandatory and therefore there is no scope for LPAs to reduce the requirement based on viability or other issues.
- Once the mandatory requirement for BNG is in place, it will be a legislative requirement, so there is no need to repeat the legal requirements in local policy. However, PAS² encourages LPAs to develop a locally specific BNG policy for the following reasons:
 - Policy made prior to the mandatory requirement allows the authority to explore and test application of BNG.
 - Policy made prior may prevent a rush of planning application for development without any BNG nearer to the mandatory requirement date.
 - A locally specific policy allows the LA to set what strategies they require developers to consider when delivering BNG, e.g., Green Infrastructure strategies, Local Nature Recovery Strategies (LNRS). This could ensure the targeting of offsite BNG delivery and to determine the 'strategic significance' score that is part of the Biodiversity Metric
 - Including BNG in the Local Plan can link biodiversity to other strategic objectives and the overall place-making strategy for an authority, enabling a more holistic approach.
 - Including a requirement of levels of BNG greater than 10% in the Local Plan would be difficult for a developer to challenge.
 - Local Environmental Record Centres (LERC) and local Wildlife Trusts could be partnered with or contracted to collate, manage and maintain databases on biodiversity which can inform the evidence base needed to implement BNG policies into the Local Plan. They may already hold relevant data and expertise (for example GIS) that could contribute to LNRS production.³
- There will be a duty on Local Authorities to report every 5 years on BNG delivery, explaining actions taken, and their impact. However, site level monitoring will be the responsibility of the developer.

3) Local Nature Recovery Strategies (LNRSs)

- A new system of spatial strategies for nature, to cover the entirety of England, established by sections of the Environment Act. These will:
 - Agree priorities for nature's recovery
 - Map the most valuable existing areas for nature
 - Map specific proposals for creating or improving habitat for nature and wider environmental goals
 - By law, the LNRSs are to include:
 1. A statement of biodiversity priorities for the strategy area, and
 2. A local habitat map for the whole strategy area or two or more local habitat maps with together cover the whole strategy area

¹ [Biodiversity 3.0 metric launched in new sustainable development toolkit - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/biodiversity-3-0-metric-launched-in-new-sustainable-development-toolkit)

² [Biodiversity Net Gain FAQs - Frequently Asked Questions | Local Government Association](https://www.local.gov.uk/biodiversity-net-gain-faqs)

³ [Biodiversity net gain. Good practice principles for development. A practical guide \(cieem.net\)](https://www.cieem.net/biodiversity-net-gain-good-practice-principles-for-development-a-practical-guide)

- The Secretary of State will appoint ‘responsible authorities’ to produce the strategies. It is anticipated that there will be around 50 LNRSs (one per county) across the entirety of England. Strategy areas will be determined by the Secretary of State.
- In performing their duty to conserve and enhance biodiversity, the Environment Act places a duty upon Local Authorities to have regard to any relevant LNRS, Species Conservation Strategies (SCS) and Protected Site Strategy (PSS).
- The Government’s intention is that LNRSs would act within the planning system to support net gain. These were referenced in the Planning for the Future White Paper to “*identify opportunities to secure enhancements [to biodiversity] through development schemes and contributions*”⁴.
- LNRSs are also intended to act as a source of evidence for local planning authorities to use in Local Plan preparation.
- PAS suggests the development of a locally specific BNG policy, which could set a requirement for developers to consider the LNRS.⁵
- In July 2021, Defra released a [Lessons Learnt Report](#) from Piloting LNRS with 5 authorities in England (ranging from county councils, Metropolitan areas and National Park Authorities). This report suggests that further consultation will take place to develop the regulations and statutory guidance, based on the findings of the pilots. It will prepare for the rollout of LNRS shortly following royal assent of the Environment Bill.
- At this time, many details, including which ‘responsible authorities’ will be required to lead the LNRS remain to be confirmed.

4) Establishment of Office for Environmental Protection

(www.theoep.org.uk)



- The OEP was established by the The Environment Act 2021 (Commencement No. 1) Regulations 2021.
- Its principle objectives are to contribute to environmental protection and the improvement of the natural environment, acting objectively, impartially, proportionately and transparently.
- It must prepare a strategy in terms of how it intends to exercise its functions and enforcement policies.
- The OEP is intended to act as a watchdog that has enforcement and investigatory powers once it become fully operational.
- It will hold public authorities and government ministers to account if they fail to comply with environmental law.
- Measures taken can include the provision of information notices, decision notices (which may lead to an environmental review by the courts, who may grant a remedy), or apply for judicial review in relation to the conduct of the authority.

5) Key Conclusions and Considerations:

- Have you started to learn about emerging work on LNRS in your area?
- Are there any networks being established currently that may assist with early engagement, to support with policy drafting? LNRS may also have implications for off-site BNG and offsetting.

⁴ [assets.publishing.service.gov.uk - MHCLG Planning Consultation](#)

⁵ [Biodiversity Net Gain FAQs - Frequently Asked Questions | Local Government Association](#)

- When preparing policies, consider whole plan viability and also whether the introduction of statutory 10% BNG may effect the housing trajectory.
- The Planning Advisory Service (PAS) hosted a training session on BNG in October 2021, slides are available [here](#) and a Frequently Asked Questions page is available on the PAS website [here](#).

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