

Understanding the Environment Act - Ecology



David West, Associate Ecologist at Tetra Tech, outlines how the new Environment Act will need careful consideration on any ecological projects moving forward

What is the Environment Act?

The Environment Act 2021 has now passed into law. Designed to protect and enhance the natural environment, it is the most groundbreaking piece of environmental legislation in many years.

For the first time this Act will set clear statutory targets for the recovery of the natural world in four priority areas:

- biodiversity
- air quality
- water
- waste

It also includes an important new target to reverse the decline in species abundance by the end of 2030, providing new tools and regulations to help all meet the new set targets.

Biodiversity is one of the key elements the new Act seeks to improve, with a summary of its most important points below.

Who does this affect?

With biodiversity gain becoming a requirement for every site, the number of people and businesses affected by the Environment Act is huge.

From developers and landowners to Local Authorities and stakeholders like Natural England, anyone involved in the planning, development or maintenance of sites should be aware of this Act.

Biodiversity Net Gain

Biodiversity Net Gain typically relates to a development which leaves an environment in a better state than before.

While this has previously been a 'should' and part of the National Planning Policy Framework and some local policies, the new Act now makes it **mandatory across the board** (subject to some limited exclusions - see timescales for projected timings).

It will be included as a condition of planning permissions issued in England, including nationally significant infrastructure.

It is **essential** to consider biodiversity and a suitable biodiversity gain plan well before planning is submitted, ideally at site selection or during masterplanning.



Mechanism

The new Schedule 7a, in the Town & County Planning Act will enforce the biodiversity requirements set out in the Environment Act.

Biodiversity gain plans will need to be included and planning only granted if the Local Planning Authority is satisfied by:

- The steps made to minimise adverse effects on habitats, and measures put in to maintain them for at least 30 years
- Metrics demonstrating pre- and post-development value
- Details of registered off-site gains allocated to the development or credits purchased
- The development meets the biodiversity gain objective – currently 10% but could go up

Calculating Biodiversity Gain

Currently, the value of a pre- and post-development site is measured using a metric like Natural England's 3.0 system.

Moving forward, the Secretary of State will publish and revise the final metric. This is likely to be a further expansion of Natural England's, but it's important to note:

- The metrics used now are unlikely to be the final version
- Pre-development values are calculated on the day permission is granted, so consideration needs to be given to when that might be e.g. in two years from submission
- Any works which have been carried out after January 2020 and result in a lowering of biodiversity value, then the pre-development value is measured immediately before the works.
- Post-development gains will only be accepted when they are secured by a condition, planning obligation or conservation covenant

Biodiversity Gain Sites and Credits

The Act makes provision for a register of **gain sites** which are:

- Under a conservation covenant, or obligation to enhance habitats
- Required to be maintained for at least 30 years
- Are made available to be allocated to one or more developments

It also defines **biodiversity credits**. Payments for credits are to the Secretary of State, and may only be used for:

- Securing or carrying out habitat enhancement works
- Purchasing land with a view to the above
- Operation or administration

Projected Timescales



December 2021

Other ecological elements

Most of the other changes are unlikely to have as much of an impact on how we plan sites in comparison to Biodiversity Gain, however some key things to bear in mind:



General duty to conserve & enhance biodiversity

This places further obligations on public bodies to further the conservation and enhancement of biodiversity in England:

- Previous wording of the Natural Environment and Rural Communities (NERC) Act is perceived to offer limited weight
- Authorities now required to consider objectives within one year of the Act being enforced, then at least every five years
- After that consideration, the authority must (unless it concludes there is no new action it can properly take)
 - determine such policies and specific objectives as it considers appropriate for taking action to further general biodiversity
 - take such action as it considers appropriate, in the light of those policies and objectives, to further that objective



Local Nature Recovery Strategies

These spatial plans will direct efforts (such as biodiversity gain sites) to where they will have the best benefit.

They'll be prepared by Local Authorities (but could also be National Park Authorities, Natural England etc.) LNRS will include:

- A statement of biodiversity priorities for the area
- A local habitat map

There is also a duty to regularly review and republish these. They are likely to feed in heavily to how we plan green infrastructure.



Conservation Covenants

An agreement between a landowner and responsible body (SoS, Local Authority or suitable body such as a charity) which:

- is of a qualifying kind,
- has a conservation purpose
- is intended by the parties to be for the public good.

It is essentially an alternative to a Section 106 or other legal agreement and isn't just for biodiversity – it can be used for conserving land with archaeological, heritage, artistic, architectural, historic or cultural interest too.



Protected Site & Species Conservation Strategies

The Act allows Natural England to prepare and publish strategies for improving the conservation status of species of flora and fauna, and the conservation and management of protected sites.

- In theory these allow for more coherent approaches to dealing with strategic issues such as nutrient neutrality
- For protected sites, it will hopefully help the habitats regulations assessment process
- For species, it may result in more initiatives, such as district level licensing for great crested newts