

TAKE FIVE

Your guide to selling
Biodiversity Net Gain
Units



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Your guide to selling Biodiversity Net Gain Units

Landowners could potentially soon benefit from the impact of the government's evolving environmental agenda.

Biodiversity Net Gain is a key part of the government's commitment to halt species decline by 2030 and was introduced by the Environment Act 2021. Developers in England will be required to deliver 10% "Biodiversity Net Gain" when building new housing, industrial or commercial developments.

To meet this new obligation, they can purchase biodiversity units from landowners who have secured habitat enhancements on their land.

Biodiversity units can be secured either by entering either into a conservation covenant with a "responsible body" - a new legal instrument created by the Environment Act 2021 - or a Section 106 agreement with the Local Planning Authority. These offsite biodiversity gain sites will need to be placed on the offsite biodiversity gain as of November 2023, but landowners can still create biodiversity units before selling them to developers - a process known as 'habitat banking'. The units can be sold to developers before or after registration.

Further details are still to be finalised but, ahead of the launch later this year, whether you are a farmer, an estate owner, or any other kind of land manager, here are some tips to ensure you are making the most of the opportunity.

1. Generating BNG units is about creating additionality

Make sure the initiatives you are introducing are creating new biodiversity benefits to the environment. The lower the biodiversity value of the land at the outset, the more units you stand to generate through habitat creation or enhancement. The number of biodiversity units generated by the habitat enhancements on the land are calculated using the Biodiversity Metric - also established by the Environment Act 2021.

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Landowners should consider what habitats are needed in the local area and take ecological advice on assessing the most appropriate types of habitat enhancements for a particular parcel of land. Of course, careful consideration will need to be given to the loss of agricultural production from that land and the impact on the broader farming business versus the value of any biodiversity units generated on that land.

2. Collaborate where it works

Professional costs of setting up these schemes can be significant for individuals but, through collaboration with other landowners, there is potential to exploit economies of scale as well as creating habitat enhancements that are more valuable per hectare than if doing it on your own.

Advantages can be created by buffering existing protected sites or improving ecological connectivity but, given the increased complexity, it will be important to seek legal advice at an early stage on the suitability of any proposed joint schemes. You should also keep an eye on any opportunities emerging from your Local Nature Recovery Strategy.

3. Consider the long-term financial implications of your enhancement

Committing to the creation and delivery of offsite biodiversity gain sites ties you into a 30-year agreement and landowners will also need to agree on a habitat management and monitoring plan for the duration of the agreement with the Local Planning Authority or responsible body. So you need to understand how the financial reward is going to cover all the works you are required to carry out to fulfil your legal obligations under the conservation covenant or s106 agreement.

In your financial planning, consider what the implications are (including tax payments) of taking a lump sum or an annual payment and the risks that could come with both. Again, taking early advice on tax will be important, and do keep an eye out on the Government's consultation on the taxation of environmental land management and ecosystem service markets. The government has also outlined in its guidance that it is possible to stack biodiversity units and nutrient credits for the same piece of work so make sure you are taking full advantage of all relevant emerging environmental markets when considering any scheme for environmental improvement.

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4. Don't forget about BNG deals when succession planning

When selling units to developers, landowners are obliged to keep the habitat enhancement in place for the full 30 years and this should be a factor in any discussions with future generations about the use of the land.

If you anticipate that ownership of the land could be transferred during the period of the obligation, make sure you have the appropriate conversations well in advance and everyone understands the impact on the long term strategy for the farm business.

5. Be prepared for change

As time marches on, national policy evolves and as you come to the end of your scheme, it could be that you will be unable to go back to using the habitat enhanced land for intensive farming.

Even when 30-year biodiversity obligations end, there will still be legal restrictions in place to address and certain types of enhancements will be more difficult to remove than others. For example, if you have planted trees, you would likely need to apply for a tree felling licence and to submit an EIA application, as well as consider any wildlife implications. Furthermore, if you have used the habitat enhancement for nutrient mitigation as well, then you will still be bound by the obligations to maintain that mitigation in perpetuity.

As further regulations for the protection and enhancement of the environment are brought forward under the Environment Act 2021, the restrictions imposed on landowners are only going to become more onerous, and will reduce flexibility regarding options for land management in the future. Landowner decisions relating to biodiversity and other environmental improvement schemes will be generation-defining and careful consideration of all the legal impacts will be crucial.



Would you like to know more?

The Things [Clean Energy and Environment](#) and Development of Land teams are experienced specialists in all aspects of the built environment, working with landowners, developers, planners and construction businesses. [Get in touch.](#)