EXPLANATORY MEMORANDUM TO

THE BIODIVERSITY GAIN SITE REGISTER (AMENDMENT) REGULATIONS 2026

2026 No. 494

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Mary Creagh CBE MP, Parliamentary Under-Secretary of State at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

2.2 Nick Barter, Deputy Director for Land Use, at the Department for Environment, Food and Rural Affairs confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Nicole Weir at the Department for Environment, Food and Rural Affairs can be contacted by email at the following address with any queries regarding the instrument: sm-defra.netgain@defra.gov.uk. Alternatively, the department can be contacted by telephone: 03459 33 55 77.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Biodiversity Net Gain ("BNG") requires development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.

4.2 Developers can deliver some or all of their BNG off-site including through buying offsite biodiversity units. These units must be on the Biodiversity Gain Site Register. The purpose of the register is to show how and where developments are improving biodiversity off-site. It also prevents 'double counting', which would happen if the same units were assigned to multiple developments.

4.3 This instrument amends the Biodiversity Gain Site Register Regulations 2024 (S.I. 2024/45). Currently, biodiversity units can only be registered and allocated to development for the purpose of mandatory BNG under the Town and Country Planning Act 1990 (c. 8, "TCPA"). This SI extends the scope of the register so that it can also be used by Nationally Significant Infrastructure Projects ("NSIPs") under the Planning Act 2008 (c. 29).

4.4 The instrument also inserts references to Schedule 2A to the Planning Act 2008, the legislative framework for the mandatory BNG requirement for NSIPs, and updates definitions so that references to "development" include both TCPA development and NSIP development.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only. This is because only land in England is eligible to be entered on the biodiversity gain site register.

5. Policy Context

What is being done and why?

5.1 The government is implementing mandatory BNG for NSIPs, as provided for in section 99 and Schedule 15 to the Environment Act 2021 (c. 30). Defra consulted on the implementation details from May to July 2025, including the proposal that for NSIPs to use any off-site biodiversity gains for their development, they must be registered on the existing biodiversity gain site register and allocated to their development.

5.2 The policy objective behind this SI is to expand the scope of the existing register to allow land to be registered and biodiversity units to be allocated to NSIPs, using the existing framework for registration, allocation and operation of the register. This creates a single, consistent register, preventing double-counting of biodiversity units and ensuring transparency for developers, decision-makers, and the public.

What was the previous policy, how is this different?

5.3 Under the Biodiversity Gain Site Register Regulations 2024, biodiversity units could only be registered and allocated to development as defined in the TCPA and for the purpose of mandatory BNG under the TCPA. NSIPs were outside its scope because mandatory BNG did not yet apply to NSIPs.

5.4 These Regulations extend the existing register system so that NSIPs, once subject to mandatory BNG, can also rely on the register for off-site gains. The conditions for registration and allocation remain unchanged and apply uniformly to both development types.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 100 of the Environment Act 2021 enables the Secretary of State to make regulations for and in relation to a register of biodiversity gain sites. These powers were used to make the Biodiversity Gain Site Register Regulations 2024 (S.I. 2024/45).

6.2 Mandatory BNG will apply to NSIPs under Schedule 2A to the Planning Act 2008, inserted by Schedule 15 to the Environment Act 2021 and brought into force by the Environment Act 2021 (Commencement No. 11) Regulations 2026 made alongside these Regulations. These Regulations make limited amendments to the 2024 Regulations to reflect the inclusion of NSIPs in the register by adjusting relevant terminology.

Why was this approach taken to change the law?

6.3 Amending the existing 2024 Regulations is the most proportionate approach to adjust the provisions governing the register. This avoids unnecessary duplication and supports the policy aim of operating a single register for all off-site biodiversity gains.

7. Consultation

Summary of consultation outcome and methodology

7.1 Defra consulted publicly on the implementation of biodiversity net gain for NSIPs between May and July 2025. The consultation sought views on the proposed approach to delivering mandatory BNG for NSIPs, and included the proposal that all off-site biodiversity gains used by NSIPs must be registered on the existing biodiversity gain site register and allocated to the NSIP. The consultation ran for eight weeks and received responses from infrastructure developers, consultants, local authorities, environmental organisations, landowners, industry bodies, academics, individuals, and other interested parties.

7.2 The government response to this consultation was published in April 2026.[1] The response confirmed the final policy position for the existing biodiversity gain site register to be used for NSIPs.

8. Applicable Guidance

8.1 Defra has published guidance on Biodiversity Net Gain.[2] This includes specific guidance on the biodiversity gain site register. Defra will update this existing guidance where needed to confirm how biodiversity units can be allocated to NSIPs. The updated guidance is expected to be published in May 2026.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it is not expected to have significant impact on the private, voluntary or public sectors. The amendments make only a minor change to the existing framework by enabling NSIPs to use the biodiversity gain site register.

9.2 A qualitative assessment of the impacts is included in the wider BNG for NSIPs Impact Assessment, which is available on gov.uk.[3]

Impact on businesses, charities and voluntary bodies

9.3 There is no, or no significant, impact on business, charities or voluntary bodies. These regulations make a minor amendment to the existing regime by allowing businesses and other organisations who choose to enter the BNG market to allocate their registered biodiversity units to NSIPs as well as to TCPA development. The registration and allocation process and fees will remain the same, meaning familiarisation costs will be negligible.

[1] Consultation outcome: https://www.gov.uk/government/consultations/biodiversity-net-gain-for-nationally-significant-infrastructure-projects
[2] Biodiversity Net Gain Guidance: https://www.gov.uk/government/collections/biodiversity-net-gain
[3] Impact Assessment: https://www.gov.uk/government/consultations/biodiversity-net-gain-for-nationally-significant-infrastructure-projects

9.4 The legislation does impact small or micro businesses. Businesses, including small or micro businesses (employing up to 50 people) are already able to participate in the BNG market by registering their land as biodiversity gain sites and paying the relevant registration fee, however participation in the market is optional. This legislation allows businesses to allocate units from their registered biodiversity gain sites to NSIPs in addition to TCPA developments, providing further opportunity for business to sell biodiversity units to developments for a financial reward. This legislation does not change the registration or allocation processes or fees, so familiarisation costs will be negligible. There is no, or no significant, impact on the public sector because Natural England will remain as the register operator, and only minimal operational adjustments are required to process the allocation of biodiversity gain sites to NSIPs.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through statutory review.

10.2 A statutory review clause is included in the existing Biodiversity Gain Site Register Regulations 2024. That review clause applies to those Regulations as amended by this instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Mary Creagh, Parliamentary Under Secretary of State has made the following statement regarding Human Rights:

"In my view the provisions of the Biodiversity Gain Site Register (Amendment) Regulations 2026 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").