



Conservation Investment Team

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OVQ2. Do you agree with our proposed position on the Environmental Action Plan and Annual Environmental Report ODI-R for RIIO-3?

No.

RSPB welcomes the existing progress Transmission Operators (TOs) have made in embedding environmental commitments within their Environmental Action Plans (EAPs). We are commenting on Ofgem's draft determination to reduce the ambition of these commitments, particularly the decision to reject funding for 10% or greater Biodiversity Net Gain (BNG) in non-statutory construction projects and to reject commitments to deliver additional biodiversity compensation beyond 10% BNG for planning consent.

This is short sighted and disappointing, missing an opportunity to direct significant investment into nature recovery. This is particularly concerning when National Grid themselves see the opportunity to make significant improvements to biodiversity through their operational activity, by making positive commitments and showing welcome environmental leadership in their Environmental Action Plan (EAP) for the upcoming regulatory period (2026–2031). In the current regulatory period, Ofgem has previously supported, and in fact incentivised, biodiversity action beyond compliance. The rejection of National Grid's biodiversity proposal for the forthcoming period, seems to be evidence of a retrograde step.

Doing the mandatory minimum will not be enough. The Environment Act sets the legal requirement of 10% BNG in England as a minimum not a ceiling¹. Ofgem and National Grid also have a duty under Section 40 of the NERC Act 2006 (as strengthened under the Environment Act 2021) to further the 'general biodiversity objective'. Given the inherent uncertainties surrounding habitat creation and the time it takes to deliver; coupled with the margins of error in calculating changes in biodiversity, 10% will at best hold the tide and provide a contingency against lost habitat to ensure no net loss of biodiversity.

Ofgem hold a legal and moral duty as regulator to seek opportunities to provide ambitious leadership and go beyond the legal minimum.

¹ [Environment Act 2021](#)



Limiting funding of biodiversity actions to minimum legal compliance is not in line with stakeholder and consumer expectations and undervalues the importance of nature in the energy transition. National Grid's proposals have been informed by stakeholder advice and consultation. Rejecting funding provision for nature enhancements beyond the minimum requirements risks undermining public and stakeholder confidence in the developments as they come forward, including potential increases in the levels of opposition.

The primary reasoning underpinning these proposals seems to be the financial implications, which flies directly in the face of the evidence that consumers and customers are willing to pay to protect biodiversity. The statement that "it is challenging to determine what environmental compensation beyond legislative requirements should be considered proportional or good value" seems to reflect a fundamental misunderstanding of the customer support for such policy. There is enduring public support in the UK for environmental protection and nature restoration, for example:

- Natural England's Public Attitudes survey data (2024) found that 9 in 10 adults were concerned about threats to the natural environment.
- Savanta's research (2024) for the Wildlife Trusts showed that 66% of UK adults believe nature is fundamental to economic growth. A similar proportion also said that government and business should invest more in nature-friendly farming and habitat restoration and supported stronger regulation to hold developers accountable for environmental harm.

Furthermore, people in rural areas, likely to be most impacted by major grid upgrade projects, put a higher value on visual impact and nature and wildlife. National Grid's proposals could therefore have greater benefits in rural areas – where they can help reduce opposition to new infrastructure.

Legally, both Ofgem and National Grid have statutory requirements to have regard to biodiversity. Section 40 of the Natural Environment and Rural Communities Act 2006 places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving and enhancing biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of policy and decision making throughout the public sector, which should be seeking to make a significant contribution to the achievement of the commitments made by government in its Plan. Ofgem's draft determination for RIIO - 3 appears to be inconsistent with these duties.

We are facing a twin crisis of climate change and biodiversity loss – the most urgent challenge of our generation and "There is no route to tackling climate change that does not involve nature, and no pathway to nature recovery that does not take into account climate change" (DESNZ, DEFRA joint document). Furthermore the UK Government has committed to protect and conserve at least 30% of the world's land and 30% of the ocean by 2030 global biodiversity goal agreed under the Kunming-Montreal Global Biodiversity Framework at the UN Biodiversity Conference (COP15) in December 2022.

We urge Ofgem to amend their draft determinations to support funding to go beyond the statutory BNG minimum and to support non-statutory BNG projects - taking into account the long-term cost savings and ecosystem services this would secure e.g. such as flood resilience, cooling and improved public amenity.

Wales context

Net Benefit for Biodiversity (NBB) is defined in Planning Policy Wales 12 (PPW) as the concept that development should leave biodiversity and ecosystems in a better state than before. It applies to all new development in Wales, including cases where biodiversity value is being maintained. Welsh Government's (WG) goal is for NBB to secure long-term, measurable benefits, primarily on site, and to promote the resilience of ecosystems.

NBB requires developers to take a proactive approach to biodiversity at the design stage. It uses a more site-specific and qualitative assessment than England, based on the Diversity, Extent, Condition, Connectivity and Adaptability (DECCA) of ecosystem resilience attributes and the stepwise mitigation hierarchy, set out in Figure 122 of PPW. Given that the State of Nature 2023 report confirms that one in six species in Wales are at risk of extinction, it is vital that demonstrably cost-effective measures for enhancing biodiversity in Wales are not arbitrarily capped to conform to English regulations that do not apply in a devolved Welsh policy area.

With this in mind, it is also concerning that the Welsh policy context is not assessed or even referenced in OFGEM's RIIIO-3 Draft Determinations report. It is imperative that what is a devolved Welsh policy area is fully understood and assessed, and not arbitrarily merged with irrelevant English requirements for expediency. Further, PPW and the Environment (Wales) Act 2016 also mandate that all developments, including those not requiring planning permission, must maintain and enhance biodiversity. This is achieved through the Section 6 biodiversity and resilience of ecosystems duty. Therefore, any work that falls under permitted development, including underground cabling, may have a statutory obligation to maintain and enhance biodiversity and should not be excluded from National Grid's Environmental Action Plan (EAP).

Regardless, and as set out elsewhere, National Grid has confirmed that construction activities not requiring formal planning permission or consent (e.g. permitted development or exemptions) are estimated to account for 10–15% of total BNG/NBB costs in the T3 period. This is estimated to translate to a low additional cost on consumer bills, of less than 10 pence, on top of costs associated with statutory NBB delivery. The proposed exclusion of these projects from biodiversity enhancement risks non-compliance with Welsh statutory requirements and represents minimal cost savings that will result in the exacerbation of the Nature Emergency in Wales.

We urge Ofgem to reconsider its stance and restore support for higher BNG/NBB commitments. A capped or minimalist regulatory approach fails to meet public expectations and will hinder the transmission sector's ability to lead by example in delivering for nature.

We therefore urge OFGEM to reconsider the position on these matters.

Yours faithfully

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² PPW page 148: <https://www.gov.wales/sites/default/files/publications/2024-07/planning-policy-wales-edition-12.pdf>