

Natural Capital Markets England Law, Policy and Practice

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1. **Abstract**

1.1 What are the main developments in agricultural law since the last Congress in 2023? The report should consider international, European Union , national and regional measures and try to express considerations in relation to one or more of the following topics, which are aimed at providing a framework for discussion. In any case, feel free to recommend other important topics that could contribute to a more effective discussion about the recent developments in agricultural law.

1.2 This paper will involve a literature review, examination of the legislative framework that affects the emerging natural capital markets in England.

1.3 Findings

Over the last 15 to 20 years the methods of valuing and creating value and revenue from Natural Capital has been hard and tortuous, with many cul de sacs and U turns.

There is still a long way to go and many problems need resolving at source rather than through a secondary mechanism.

While it remains an important Government mechanism to facilitate development and fund conservation management, ALL professionals in the rural sector must hone their skills and awareness to guide their clients through the opportunities and pitfalls within the Natural Capital Markets.

1.4 Key words:

Natural Capital, Biodiversity Net Gain (BNG), Nitrate offsetting, Planning & Development, Environment, Landscape Recovery.

1.5 Word count – 3382

2. **What is Natural Capital**

2.1 Gemini AI finds Natural Capital to mean:

Natural capital is the world's stock of environmental assets—such as land, forests, water, soil, air, biodiversity, and minerals—that provide ecosystem services and a wide range of benefits to society. These benefits, which can be economic, social, or environmental, include provisioning services (like food and water), regulating services (like climate regulation), cultural services (like recreation), and supporting services (like nutrient cycling). By recognizing and valuing natural capital, we can make better decisions to ensure its long-term health, which supports both human well-being and sustainable economic growth.

2.2 In response to UK Government initiatives on matters such as water quality, air quality, carbon sequestration and bio-diversity the Royal Institution of Chartered Surveyors prepared a paper as long ago as 2017 on “Value of natural capital –the need for chartered surveyors” by Charles Cowap et al. This had followed a 2012 publication “Challenges for International Professional Practice: from market value to natural value”

2.1 Early schemes attempting to capture financial benefits from natural capital, other than through traditional agricultural, forestry and mining systems, included:

- Carbon Credits (which some still liken to the wild west. Even BrewDog withdrew from withdrew from the market in 2024, citing poor quality schemes and the high cost of good quality credits), and
- Provision of habitat for the translocation of protected species, such as Sand Lizard, Smooth Snake and Dormice.

2.2 Both legislation and Case law at national and European levels have developed over the last few years enabling real financial markets to develop, most notably in Bio-diversity Net Gain Credits and Nitrate Off-setting.

3. **Review**

- 3.1 Since September 2023 there have been several developments in the Natural Capital environment. Many of these have been Government led, although some pioneers in the field have forged ahead with landscape scale rewilding projects, such as the one on the Knepp Castle Estate in Sussex. (<https://knepp.co.uk/>).
- 3.2 Of the Government led initiatives, the following are notable:
- i. Mandatory Biodiversity Net Gain (BNG)
 - ii. The provision of a statutory metric for BNG.
 - iii. The introduction of Conservation Covenants and the definition of Responsible Bodies.
 - iv. The introduction of the Planning and Infrastructure Bill, (currently in its Committee Stage).
 - v. The introduction of Land Use Frameworks and Local Nature Recovery Strategies.
 - vi. The maturing of Nitrate Off-setting markets – primarily led by Hampshire & Isle of Wight Wildlife Trust and some of the water companies.
- 3.3 Bio-diversity Net Gain (BNG) Credits
- 3.3.1 The UK Government defines Bio-diversity Net Gain (BNG) is an approach to development. It makes sure that habitats for wildlife are left in a measurably better state than they were before the development. BNG became mandatory from September 2023 for most development in England under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).
- 3.3.2 Therefore developers must deliver a BNG of 10%. This means a development will result in more or higher quality natural habitat than there was before development. There are currently a few exemptions, including:
- Self-build homes and
 - where impacts are deemed “de minimus” e.g. < 25m²
- The Environment Act expects developers to prioritise on site mitigation before they look for off-site BNG units.
- 3.3.3 Impact on farming businesses are not only for commercial development but may affect the core farming business by requiring mitigation for a new barn or extension to a farm building. Ponds have also fallen into scope in some areas. The requirements are quite new and Local Planning Authorities are still working through the detail.
<https://www.gov.uk/guidance/understanding-biodiversity-net-gain>
- 3.3.4 However, while BNG was implemented for major developments in February 2024 and for minor developments in April 2024, the Planning and Infrastructure Bill proposes changes to the BNG policy. The Government consultation is suggesting potential exemptions for small-site housebuilding and other minor developments, which has raised concerns among nature organizations about the policy's effectiveness and potential for damage to nature recovery efforts.

3.3.5 The demand for BNG Credits has been significantly lower than expected. Some private schemes have failed and several of the “Responsible Bodies” are only offering BNG Credits where they can be stacked on other schemes, such as Nitrate Neutrality. A number of reasons have been cited for the lack of demand by various commentators and practitioners:

- i. Slower Housing Market.
- ii. Developers finding exemptions.
- iii. Larger developments using public green space to deliver BNG on-site.
- iv. Large infrastructure projects are not included.

There is some evidence that demand in the market is picking up.

3.4 Biodiversity Net Gain Statutory Metric

3.4.1 Alongside the BNG implementation, the Statutory Metric spreadsheet was launched to calculate the statutory metric to be used by all developers and off site BNG providers. When planning a development or looking to create a BNG scheme the developer must undertake (or use a consultant to undertake) a baseline assessment of the ecological value of the site.

3.4.2 Habitats are divided into low, medium and high distinctiveness. Mitigation for the impacts on a habitat must create a habitat of equal or higher distinctiveness. E.g. a lowland meadow is of high distinctiveness while other neutral grassland (semi improved) is of medium distinctiveness.

3.4.3 Some habitats are classified as irreplaceable. The irreplaceable habitats in England listed in the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 are: ancient woodland, ancient and veteran trees, blanket bog, limestone pavements, coastal sand dunes, Spartina saltmarsh swards, mediterranean saltmarsh scrub, and lowland fens. These habitats are considered unique and cannot be easily recreated, so they require specific compensation arrangements agreed by the Local Planning Authority rather than standard BNG.

| Sheet Name | | Headline Results |
|--|--------------------|--|
| Headline Results | | |
| Headline | | BNG Targets Met ✓ |
| Trading Rules | | Trading Rules Satisfied ✓ |
| Next steps | | Check for input errors/rule breaks present in the metric |
| Baseline Units | Area habitat units | Zero Units Baseline |
| | Hedgerow units | Zero Units Baseline |
| | Watercourse units | Zero Units Baseline |
| Post-development Units | Area habitat units | 0.0000 |
| | Hedgerow units | 0.0000 |
| | Watercourse units | 0.0000 |
| Total net unit change | Area habitat units | 0.0000 |
| | Hedgerow units | 0.0000 |
| | Watercourse units | 0.0000 |
| Total net % change | Area habitat units | % target not appropriate |
| | Hedgerow units | % target not appropriate |
| | Watercourse units | % target not appropriate |
| Area habitat units required to meet target | | 0.0000 |
| Hedgerow units required to meet target | | 0.0000 |
| Watercourse units required to meet target | | 0.0000 |

Chart 1 - Unit change by habitat group

Sample sheet from the Statutory Metric Spreadsheet

3.5 Statutory biodiversity credit prices

3.5.1 Statutory biodiversity credit prices are set by Defra (the Department for Environment, Food & Rural Affairs) varying by habitat. Prices range from £42,000 for common grasslands to up to £650,000 for high-distinctiveness habitats like lakes. These prices are set at a deliberately uncompetitive level to encourage developers to create new habitats on-site or off-site, providing a "last resort" option when private biodiversity units are unavailable.

| Habitat distinctiveness | Broad habitat type | Specific habitat type | Price per credit | Tier |
|-------------------------|--------------------|-----------------------|------------------|------|
| Medium | Grassland | All | £ 42,000 | A1 |
| Medium | Lakes | All | £125,000 | A4 |
| High | Grassland | Lowland Calc. Grass. | £ 48,000 | A2 |
| High | Woodland & Forest | Felled | £ 66,000 | A3 |

Sample Prices from Defra

3.6 Conservation Covenants & Responsible Bodies

3.6.1 To provide BNG units or Nitrate Credits, a Section 106 agreement had to be made with the Local Planning Authority (LPA). A Section 106 (S106) agreement, stems from Section 106 of the Town and Country Planning Act 1990. It is a legally binding agreement between a local authority and a developer, also known as a planning obligation, to address the impact a development will have on the local area. These agreements are attached to the land and can include financial contributions for things like infrastructure and services (e.g. schools, affordable housing, road improvements), or use restrictions on the property itself. They are negotiated to ensure developments are acceptable in planning terms by mitigating their pressure on the community and local infrastructure.

3.6.2 There is now the option to agree a Conservation Covenant with a Responsible Body. A conservation covenant is a new legal agreement in England, established by the Environment Act 2021, where a landowner voluntarily commits to a responsible body to conserve natural or heritage features of their land for the public good. The covenant is legally binding and continues to be effective even when the land changes ownership, ensuring long-term protection of the environment or historical sites. The concept was recommended by the Law Commission in a 2014 report, with the Environment Act 2021 bringing them into force in England.

3.6.3 A Responsible Body can be an LPA, a conservation charity or another body that has a conservation remit.

3.6.4 There are some advantages to using Conservation Covenants.

- They can be quicker to set up
- They may be cheaper, however being novel, this is often not the case.
- They should be far more flexible.
- They are not dependent on the Local Planning Authority.

However, many local authorities, landowners and developers have been resistant to Conservation Covenant as they are unproven at this stage.

3.7 Planning and Infrastructure Bill

3.7.1 The new Labour Government in the UK are looking to improve the UK economy. Chancellor of the Exchequer Rachel Reeves has stated:

[Our] economic strategy has been based on securing stability, boosting investment, and reforming public services to kickstart growth.

Her statements reflect a plan to rebuild the economy after inheriting what Labour described as a difficult financial situation.

The Industrial strategy is described as a modern industrial strategy ... to provide a clear policy framework for businesses and target key sectors for growth, including clean energy, manufacturing, and technology.

There will be Planning reform to facilitate the Government aim to build 1.5 million new homes creating a permanent boost to GDP.

3.7.2 To facilitate these strategies, the Government has introduced the Planning and Infrastructure Bill to the Houses of Parliament. The Bill aims to:

- i. streamline planning,
- ii. speed up house building and
- iii. ensure “faster and more certain” consenting orders for critical infrastructure.
- iv. Natural England will be responsible for producing a plan to deliver the environmental outcomes.

3.7.3 In its initial form it proposed that developers will pay a levy into a central pot instead of buying individual environmental credits or making separate contributions for things such as mitigation for impacts on coastal birds or the New Forest.

3.7.4 There has been intense lobbying from the Conservation Sector as it is felt many good and progressive schemes will be lost. Hampshire & the Isle of Wight Wildlife Trust believe that there is some good in the Bill, but there are many unanswered questions and concerns with the proposals, such as:

- How is the level of the levy set and by who?
- What happens to projects already up and running?
- Will it, in effect, be the nationalisation of environmental schemes?
- How local will it be?
- How will projects be commissioned and delivered?
- Who holds the cash?
- Does Natural England have the staff or expertise to produce the plan?

3.7.6 The Environment Bank have been lobbying for centralised conservation schemes for many years and have been quick to position themselves as a prime mover in the market. Although founded by Professor David Hill CBE to provide a market mechanism for Biodiversity Net Gain (BNG) in the UK. He appears to no longer be a part of the business, who have now partnered with Gresham House, a specialist investment management company.

3.7.7 The Bill was introduced to the House in the Spring with the aim to get Royal assent in Spring 2026. It is currently at the Committee Stage

3.8 The Land Use Framework.

3.8.1 DEFRA launched a consultation on a Land Use Framework on 31st January 2025. The consultation closed on 25th April 2025.

3.8.2 The Land Use Framework (LUF) is the proposed national strategy for England that will guide how land is used to balance social, economic, and environmental objectives, including housing, food production, and nature recovery. Local Nature Recovery Strategies (LNRS) are the practical, locally-led plans within this framework, mandated by the Environment Act 2021, which map areas for nature recovery and identify specific actions to expand and connect habitats into a national Nature Recovery Network. Both are crucial for integrating diverse land needs and achieving government targets for improving biodiversity and environmental quality

3.8.3 The next stages will involve sector engagement in a collaborative process as [the Government] design a final Land Use Framework. The Government are promising that the process will be informed by the views of landowners, businesses, farmers, and nature groups and that the evidence gained in the consultation process will feed into the wider reform they are delivering through the Farming Roadmap and Food Strategy. They aim to publish the Land Use Framework & Local Nature Recovery Strategy late 2025.

3.9 Local Nature Recovery Strategies (LNRS)

3.9.1 Local Nature Recovery Strategies (LNRS) are a new system of spatial strategies for nature across England, introduced under the Environment Act 2021. These strategies aim to identify locations for improving nature and providing environmental benefits like carbon sequestration and flood regulation.

The overarching goal is to create a larger, better, and more connected ecological network. Each LNRS will map existing valuable wildlife areas, agree on priorities for nature recovery, and identify specific actions to achieve these priorities. By providing a clear spatial framework, LNRS will help target investment and action where it will be most effective for nature and the environment.

County Councils have produced consultation drafts and are expected to publish their LNRS in 2025.

3.10 Linking The Land Use Framework & Local Nature Recovery Strategies

The Local Nature Recovery Strategies are a key part of delivering the broader goals set out in the Land Use Framework. The Land Use Framework will provide the overarching policy environment, while the Local Nature Recovery Strategies will offer the detailed, geographically specific plans for achieving nature recovery objectives on the ground.

3.11 Nitrate Off-setting

- 3.11.1 Due to high levels of pollution in many aquatic habitats (like The Solent), with no obvious means of mitigating the impacts, Natural England advised local authorities to put all new planning permissions on hold, that could affect sensitive habitats until a solutions could be found. (This happened in many designated areas.)
- 3.11.2.i This advice was given following the Dutch Nitrogen case. - On 07 November 2018 the European Court of Justice (CJEU) ruled on Cooperation Mobilisation for the Environment v Vereniging Leefmilieu.
- 3.11.2.ii Where a European protected site is in unfavourable condition, the ability to permit activities which would give rise to additional pollution is 'necessarily limited' and would need careful justification to ensure that it is compatible with the Habitats Directive.
- 3.11.3 House building was halted in many parts south Hampshire for over two years. It could only resume where the developer can demonstrate 'nutrient neutrality'.
- 3.11.4 Hampshire & Isle of Wight Wildlife Trust were the first to see the opportunity. They have purchased many sites, mainly on the Isle of Wight, to offset nitrates produced by development. The sites need to be in some form of intensive agriculture (approved by Natural England) where excess nitrates are regularly fed into the relevant water system. This can either be the application of artificial or organic manures or through the raising of livestock or managing dairy cows.
(NB the flexibility of pig enterprises means that they are often treated with suspicion by NE)
- 3.11.5 The market for Nitrate off set credits in South Hampshire, England, currently sits at about £2,000 to £4,000 per kilogram of nitrate offset.
- 3.11.6 Owing to the source of this system stemming from the CJEU, Nitrate offsetting is unlikely to be affected by the Planning and Infrastructure Bill.

3.12 Landscape Recovery

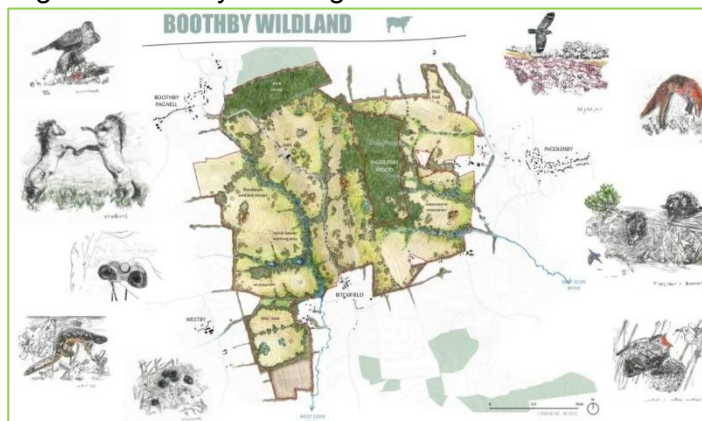
3.12.1 Landscape Recovery is a Government scheme within England's Environmental Land Management Schemes (ELMS), funding large-scale, long-term projects by farmers, landowners, and stakeholders to restore natural habitats and ecosystems. It aims to achieve significant environmental and climate benefits, focusing on biodiversity, water quality, and net zero goals through bespoke, long-term agreements that combine public funding with private investment for ambitious, landscape-scale changes. It is one of three Environmental Land Management schemes, alongside the Sustainable Farming Incentive and Countryside Stewardship, and supports collaborative initiatives by farmers and landowners.

3.12.2 Landscape Recovery Projects have a number of key features:

- i. **Long-term and large-scale:** Projects focus on significant habitat restoration and land-use changes over a period of 20 years or more, covering a minimum area of 500 hectares.
- ii. **Focus on ecosystem restoration:** The scheme funds projects that improve biodiversity, water quality, and contribute to the government's Net Zero ambitions. Examples include restoring peatlands, woodlands, and wetlands.
- iii. **Blended public and private funding:** While the scheme provides initial development grants, it is designed to attract long-term private investment to complement government funding. This private finance is often generated through nature markets, such as selling carbon credits or biodiversity net gain units.
- iv. **Collaborative approach:** The scheme encourages groups of landowners, farmers, and environmental organizations to work together to deliver shared environmental goals across a connected landscape.

3.12.2 Following two years of development work, two pioneering projects have now secured their funding and are beginning long-term delivery on the ground.

- Boothby Wildland in Lincolnshire: the first to be offered an implementation agreement. - 620 hectares of former Grade 3 arable farmland.



- Upper Duddon in the Lake District National Park. Led by the University of Leeds, this project brings together farmers, environmental organisations and the local community to manage 2,800 hectares of uplands in West Cumbria.



4. Conclusions

4.1 Over the last 15 to 20 years the methods of valuing and creating value and revenue from Natural Capital has been hard and tortuous, with many cul de sacs and U turns.

4.2 There is still a long way to go, and many problems need resolving at source rather than through a secondary mechanism.

For example, If the United Kingdom imports 40% of its food, then it also imports about 40% of its nitrogen output from sewage farms. So off-setting sewage nitrogen with agricultural fertilizer inputs is not sustainable. Presently biosolids from the sewage industry are used to replace artificial fertilizers. If water nitrified were to replace the artificial nitrate rather than be flushed directly into the river s or sea, at least the crops would strip out further nutrients.

4.3 All professionals in the rural sector must hone their skills and awareness to guide their clients through the opportunities and pitfalls within the Natural Capital Markets.

5. My sincere gratitude goes to:

John Durnell BSc (Hons),
Director of Nature Based Solutions at Hampshire & Isle of Wight Wildlife Trust

and

Charles Cowap MBA, MRICS, FAAV
Visiting Professor at Harper Adams University

Without whose generosity of information, comment and thought, this paper would not have been possible with the texture and detail provided.

5. References

FURTHER READING AND INFORMATION

The first six items on the list provide a good starting point:

Challenges for International Professional Practice: from market value to natural value by Charles Cowap et al, published by the RICS 2012.

Value of natural capital –the need for chartered surveyors by Charles Cowap et al. published by the RICS

NatureScot **landing page on natural capital** (with helpful 5 minute introductory video)
<https://www.nature.scot/professional-advice/social-and-economic-benefits-nature/natural-capital>

Scottish Forum on Natural Capital **Introduction to natural capital**
<https://naturalcapitalscotland.com/about/natural-capital/#.YjNER3r7Trc>

Defra **Enabling a Natural Capital Approach guidance**
<https://www.gov.uk/guidance/enabling-a-natural-capital-approach-enca>

Natural England **Natural Capital Evidence Handbook** (with a focus on place-making)
<http://publications.naturalengland.org.uk/publication/4658498148499456#:~:text=Downloads%20available%20for%20this%20record%20%20%20,%20%202021%2F03%2F05%20%208%20more%20rows%20>

Corporate Natural Capital Accounting method (ONS)
<https://www.ons.gov.uk/economy/environmentalaccounts/methodologies/uknaturalcapitalaccountsmethodologyguide2021>

Natural Capital Protocol (now part of the international Capitals Coalition)
https://capitalscoalition.org/capitals-approach/natural-capital-protocol/?fwp_filter_tabs=training_material

Dasgupta Review of the Economics of Biodiversity
<https://www.gov.uk/government/publications/final-report-the-economics-of-biodiversity-the-dasgupta-review>

Valuing Nature Programme papers on **demystifying economic valuation** and **green finance**
<https://valuing-nature.net/demystifying-series>

Common International Classification for Ecosystem Services (CICES) v5.1
<https://cices.eu/resources/>

Defra **Enabling a Natural Capital Approach guidance**
<https://www.gov.uk/guidance/enabling-a-natural-capital-approach-enca>

Natural Capital Committee for England (research-focused, aimed at informing decisions of Westminster Government)
<https://www.gov.uk/government/collections/natural-capital-committee-documents#embedding-natural-capital-into-decisionmaking>

Government guidance issued 21 February 2023:

- Combining Environmental Payments: <https://www.gov.uk/guidance/combining-environmental-payments-biodiversity-net-gain-bng-and-nutrient-mitigation>
- Press release on Biodiversity Net Gain: <https://www.gov.uk/government/news/new-developments-to-deliver-for-people-and-nature>
- Guidance on Biodiversity Net Gain: <https://www.gov.uk/government/collections/biodiversity-net-gain>
- Land manager guidance on the sale of biodiversity units: <https://www.gov.uk/guidance/sell-biodiversity-units-as-a-land-manager>
- Environmental Land Management Update (Defra, June 2023): <https://www.gov.uk/government/publications/environmental-land-management-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services/environmental-land-management-elm-update-how-government-will-pay-for-land-based-environment-and-climate-goods-and-services>
- Sustainable Farming Incentive Handbook 2023 (Defra): <https://www.gov.uk/government/publications/sfi-handbook-for-the-sfi-2023-offer>
- Updated since, see the same URL. Also Defra press release concerning 2024 additions: <https://www.gov.uk/government/news/thousands-of-applications-made-for-sustainable-farming-incentive>
- Policy Paper: integrating data, science and innovation for better use of land (Defra, May 2023): <https://www.gov.uk/government/publications/finding-common-ground-integrating-data-science-and-innovation-for-better-use-of-land/finding-common-ground-integrating-data-science-and-innovation-for-better-use-of-land#:~:text=%5Bfootnote%2011%5D-.The%20government%20has%20committed%20to%20publish%20a%20Land%20Use%20Framework,Land%20Use%20in%20England%20Committee.>
- Landscape Recovery: first projects move into delivery phase <https://defrafarming.blog.gov.uk/2025/08/29/landscape-recovery-first-projects-move-into-delivery-phase/>
- Boothby Wildland <https://www.nattergal.com/boothby-wildland>
- Upper Duddon Landscape Recovery Project <https://bag.leeds.ac.uk/projects/upper-duddon-landscape-recovery/>