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Due diligence on forest-risk commodities

WWF-UK's asks on the UK's secondary legislation on due diligence

Policy Briefing

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SUMMARY

- Forests and other critical natural ecosystems, such as savannahs and grasslands, are being destroyed at unforeseen rates. Halting and reversing nature destruction is essential to fight the climate and biodiversity emergencies, reduce the risk of future pandemics and protect human rights.
- The UK Environment Act became law in November 2021 and includes due diligence provisions designed to reduce the UK's role in global deforestation. The Government is currently developing secondary legislation which is critical to ensuring the due diligence provisions in the Act are effectively implemented and enforced.
- In this briefing, WWF-UK provides key recommendations to ensure robust implementation and effective enforcement of the new UK due diligence regulation. These include: a wide scope of commodities in the first round of implementation, the introduction of a volume threshold for companies in scope and mandatory comprehensive public reporting.

INTRODUCTION

The production of agricultural and forestry commodities drives over a quarter of deforestation and conversion of other natural ecosystems globally.¹ Forests and other vital ecosystems play a critical role in removing carbon from the atmosphere and are critical to provide us all with the food, freshwater, oxygen and other ecological services we need to survive. Over 1.6 billion people, including indigenous peoples and local communities, depend on these ecosystems directly for their livelihoods. Without protecting and restoring global forests and other natural ecosystems, the twin challenges of climate change and biodiversity loss cannot be mitigated, and we will be unable to avoid catastrophic consequences or to meet the food demands of a growing human population.

The UK has a responsibility to address its impacts on nature and people both domestically and abroad. Between 2016 and 2018 an average of 21.3 million hectares - an area nearly the size of the UK - was required overseas every year to supply the UK's demand for just seven forest-risk commodities (including beef, cocoa, palm oil and soy).² The UK must remove the deforestation, conversion and land degradation embedded in its supply chains if it is to reduce its footprint abroad, as promised in its 25 Year Environment Plan³. At COP26, the UK along with 140 other countries committed through the Glasgow Leaders' Declaration on Forests and Land Use to work together to *'halt and reverse forest*

¹ Curtis, P.G. *et al.* (2018) Classifying drivers of global forest loss. DOI: 10.1126/science.aau3445

² WWF-UK and RSPB (2020) Riskier Business: The UK's Overseas Land Footprint. www.wwf.org.uk/riskybusiness

³ DEFRA (2018) 25 Year Environment Plan. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

loss and land degradation by 2030'. The new due diligence legislation in the UK presents a unique opportunity to progress towards this goal. It is important to highlight that the due diligence legislation is an outcome of one recommendation among the package of 14 recommendations from the Global Resources Initiative (GRI) Taskforce⁴, set up by the UK Government to address the challenge of commodity-driven deforestation and conversion abroad. Although passing the Environment Act is a major first step, all other interconnected recommendations provided by the GRI Taskforce should be implemented in full to ensure that the UK meets its pledges of reducing its impact overseas.

THE DUE DILIGENCE OBLIGATION IN THE ENVIRONMENT ACT

The Environment Act makes it illegal for certain companies operating in the UK to use forest-risk commodities (e.g., soy, palm oil and cocoa) and derived products that have been produced on land that has been illegally converted or occupied, thus seeking to prevent products associated with illegal deforestation or land conversion from entering the UK market. Companies in scope of the legislation must undertake due diligence in their supply chains to assess and mitigate the risk that relevant local laws were not complied with to produce the commodities they use, and report on this exercise.

Much of the detail of these new due diligence obligations, including which companies and forest-risk commodities they will apply to, is due to be determined in secondary legislation and accompanying guidance. These are the subject of the Department for Environment, Food and Rural Affairs' (Defra) consultation on due diligence: *Implementing due diligence on forest risk commodities*, which is opened until 11th of March 2022.

The resulting secondary legislation and guidance will determine:

- Which commodities will be in scope of the regulations;
- The sequence in which commodities will be brought into scope;
- Which businesses will be subject to the due diligence obligations;
- What those businesses will be required to do in relation to their due diligence obligations; and
- How the requirements will be enforced.

Although not being considered as part of the current consultation, we consider the legality approach - prohibiting only commodities resulting from *illegal* deforestation and conversion, rather than gross deforestation and conversion - to be a significant shortcoming of the due diligence legislation. There is considerable evidence and demand from civil society and businesses to go beyond a legality approach. At the first possible opportunity for review, the UK government should widen the scope of the due diligence obligation and include *all* deforestation and conversion, not only that which is illegal, to ensure that no products sold in the UK continue to contribute to the destruction of nature abroad. For more information, see WWF-UK's report [Due Negligence](#).

WHY DO WE NEED ROBUST IMPLEMENTATION AND ALIGNMENT WITH OTHER SIMILAR LEGISLATION?

These new due diligence obligations are, according to the UK Government, intended to ensure "*there is no place on our supermarket shelves for commodities that have been grown on land illegally occupied or used and to support other countries to strengthen and enforce their forest protection measures*".⁵ **The extent to which they do in fact ensure the products we buy are not driving**

⁴ Global Resource initiative (2020) Final Recommendations report – Executive Summary.

⁵ Defra (2021) Implementing due diligence on forest risk commodities: consultation document (defra.gov.uk). Available at: <https://consult.defra.gov.uk/international-biodiversity-and-climate/implementing-due-diligence-forest-risk-commodities/>

destruction in precious landscapes, like the Amazon and Cerrado, will depend on how well the secondary legislation is designed, implemented and enforced. This is particularly important given that the UK due diligence obligation applies only to *illegal* deforestation and conversion, rather than all types of deforestation and conversion.⁶

Ensuring the obligation is comprehensive in terms of the forest-risk commodities and companies in scope is critical to address the key drivers of deforestation and conversion in commodity supply chains. It will also provide businesses and financiers with the certainty they need to invest and adapt their supply chains or portfolios, particularly in lagging commodity sectors.

The US⁷ and the EU⁸ are also in the process of introducing similar due diligence laws, recognising that demand-side policies, like due diligence obligations, are critical tools in reducing deforestation and conversion globally. The UK's due diligence law must be at least as robust as other leading legislation and policy measures being introduced by other consumer countries, to ensure strong market signals for high environmental standards in trade, and to facilitate compliance by global businesses. Moreover, robust legislation that is consistent with those in other leading consumer markets will ensure the UK has credibility in its efforts to drive collective action to address nature loss and climate change.

WWF-UK'S KEY POLICY ASKS

We provide below a brief summary of our key asks for policymakers⁹:

- **All forest-risk commodities and their derived and embedded products should be in scope from the outset, including but not limited to beef, leather, cocoa, coffee, rubber, palm oil, soy and maize.**
 - Nature destruction is happening at pace. To meet the goal of stopping and reversing deforestation and land degradation by 2030, we cannot wait another 3-5 years to start regulating the main commodities driving this destruction.
 - The forthcoming EU and the US legislation are expected to include most of the abovementioned commodities. For its Environment Act to be “world-leading” legislation, the UK should not fall behind by having fewer commodities in scope.
- **The volume of forest-risk commodities a company uses should determine whether that company falls in scope of the legislation.**
 - Currently, the Government wants to use a turnover threshold to determine which companies fall in scope. The volume of forest-risk commodities handled by companies is of higher importance than companies' turnover, as it provides a more direct indication of the potential risks of (illegal) deforestation and conversion.
 - Therefore, an additional volume-based threshold should be introduced to ensure that are handling significant volumes of low-margin commodities are in scope.

⁶ WWF-UK's report, *Due Negligence*, demonstrates the issues caused by the legality approach for the due diligence law, which include higher risks of legal conversion and deregulation as well as issues with companies' ability to comply with the law, due to the complexity of legal frameworks in producer countries. See the report webpage for further information on the impacts of a UK due diligence law based on illegal deforestation only:

<https://www.wwf.org.uk/what-we-do/due-negligence-report>

⁷ https://www.schatz.senate.gov/imo/media/doc/forest_act.pdf

⁸ https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en

⁹ Our full set of asks are set out in detail in our response to the Defra consultation on implementing due diligence, available on request.

- **Certification can be a useful tool for some elements of due diligence, but it cannot be used as a replacement for compliance with the due diligence obligations.**
 - Despite its benefits across a variety of social and environmental impact areas, certification does not guarantee a product is free from (illegal) deforestation and conversion. Certification schemes should only serve as a component of due diligence if identity-preserved or segregated certification (rather than book and claim / mass balance) models are used and if the credibility of a scheme as an indicator of legality is assured.
- **There must be mandatory public reporting of how companies are undertaking due diligence to ensure progress and accountability.**
 - All reported data, unless justified, should be made public to facilitate due diligence across the supply chain and provide other stakeholders, such as financiers and civil society, the opportunity to access and verify information.
 - Company reporting requirements must consist of disclosure of the principles and procedures used to perform due diligence, including risk management systems, information on traceability (including volumes of commodity used, sourcing region (sub-national level, where possible), identity of direct/indirect suppliers) and actions taken to mitigate risks.
 - Public reporting on due diligence will enable the UK financial sector to assess risks of, and eliminate, deforestation and conversion from their portfolios. This transparency is vital to ensuring financial institutions meet their pledges on eliminating commodity-driven deforestation made at COP26¹, as well as the UK's plan to become the world's first net zero aligned financial centre.
- **The Government should provide clear requirements for compliance in the secondary legislation itself, supported by pragmatic and comprehensive guidance.**
 - Secondary legislation must clearly define what companies' due diligence systems should achieve and what information will be required as proof of compliance by businesses.
- **The Government must establish an independent, specialised, and sufficiently resourced enforcement body.**
 - An independent regulatory body should be established with powers to proactively investigate non-compliance and levy fines and sanctions.
 - This enforcement body must have sufficient financial and other resources to build the necessary expertise and ensure the regulations are effectively enforced through regular investigations.
 - Evidence from the EUTR and UKTR¹⁰ shows that, to be dissuasive, fines should be proportional to the financial gains provided by any breach of the regulation. Additional non-monetary sanctions such as injunctions on further sale and/or processing should be adopted in conjunction with strong fines.
- **The UK due diligence regulation should be aligned with emerging legislation and policies from other consumer countries, notably the EU, to ensure strong market signals for high environmental standards in trade, and to facilitate compliance by global businesses.**
 - Many global businesses operate in the UK and in other major consumer countries, and therefore, need to comply with the legislation in each jurisdiction. To facilitate and increase the robustness of implementation, emerging legislation on sustainable supply chains should be aligned. This will not only facilitate compliance but, more importantly, provide clear market signals to trading partners.

¹⁰ WWF (2019) WWF Enforcement Review of the EU Timber Regulation (EUTR). Available at: https://wwf.panda.org/wwf_news/?357123/WWF-Enforcement--Review-of-the-EU-Timber--Regulation-EUTR