



Department
for Environment
Food & Rural Affairs

Due diligence on forest risk commodities

Consultation document

August 2020



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Introduction

It is vital that the recovery from COVID-19 helps us to build a greener, fairer and more resilient global economy. Protecting precious forest environments is central to tackling climate change, ensuring that people have secure livelihoods, and protecting the natural systems on which we all rely for the food we eat, the water we drink and the air we breathe. Responsible businesses have been leading the way in establishing sustainable supply chains to protect forests, and this policy aims to support and reinforce those efforts.

We are launching this consultation to seek your view on whether the Government should introduce a new law designed to prevent forests and other important natural areas from being illegally converted into agricultural land.

The law we are proposing would work by requiring a relatively small number of larger businesses to make sure that the ‘forest risk’ commodities they use – commodities that can cause wide-scale deforestation – have been produced legally. This is because globally a large proportion of forest clearance to produce these commodities is not considered legal¹.

Larger businesses are more likely to have the influence to send a positive signal to producers, and so are in scope of this proposal. Our proposal would make it illegal for these businesses to use forest risk commodities that have not been produced in accordance with relevant local laws, and they would need to take steps (undertake due diligence) to show that they have taken proportionate action to ensure this is the case. This would set a clear requirement on businesses, and those who do not comply would be subject to fines.

Recognising the importance of deforestation in supply chains, in 2019 the Government established an independent taskforce called the Global Resource Initiative as part of our 25 Year Environment Plan. The Global Resource Initiative considered actions the UK could take to make international supply chains greener, and leave a lighter footprint on the global environment. They submitted their [final recommendations report](#) to the Government in March this year: one of their key recommendations was that the Government should introduce a mandatory due diligence requirement. This consultation is designed to inform the Government’s response to that recommendation.

How and why are we consulting?

This consultation sets out our proposal and asks for views on whether we are using the right principles to guide our approach, and what impact it might have on business and other interests. This is not a final proposition. The aim of the consultation is to allow us to hear from a wide range of stakeholders in the UK and internationally on the broad principles of our proposal in order to make sure that any future primary legislation is designed in the right way.

We will publish a report on gov.uk summarising the feedback that we have received after the consultation closes. This will be complemented by a full impact assessment, which will take in to account evidence received through the consultation in considering the potential cost to businesses.

It is important to note that if the Government decided to legislate, we would consult again to support secondary legislation prescribing what commodities we will include, and when we set out details of the framework of due diligence steps that businesses would need to take.

The Global Resource Initiative drew on a wide range of expertise from across business, finance and civil society. Its recommendations were informed by careful review of the evidence, as well as by engagement with a wide range of stakeholders. This consultation draws on that work and wider evidence gathering.

How to respond

Please submit your consultation response using the online survey provided on Citizen Space (Citizen Space is an online consultation tool). Alternatively, please email your response to Due.Diligence@defra.gov.uk, or post your response to:

Consultation Coordinator at Defra,
2nd Floor, Foss House,
Kings Pool, 1-2 Peasholme Green,
York,
YO1 7PX

Responses should be received by 11.59pm on 5 October 2020. This is a 6 week consultation.

Confidentiality and data protection

After the consultation, a summary of the responses will be published and placed on the Government website at www.gov.uk/defra.

Information provided in response to this consultation, including personal data, may be published or disclosed in accordance with the access to information regimes. These are

primarily the Environmental Information Regulations 2004 (EIRs), the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 2018 (DPA). We have obligations, mainly under the EIRs, FOIA and DPA, to disclose information to particular recipients or to the public in certain circumstances.

If you want the information that you provide to be treated as confidential, please be aware that, as a public authority, the Department is bound by the Freedom of Information Act and may therefore be obliged to disclose all or some of the information you provide. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

This consultation is being conducted in line with the Cabinet Office “Consultation Principles”, which can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>.

If you have any comments or complaints about the consultation process, please address them to:

Consultation Coordinator at Defra,
2nd Floor, Foss House,
Kings Pool, 1-2 Peasholme Green,
York,
YO1 7PX

Or email: consultation.coordinator@defra.gov.uk

Devolved administrations

Environmental policy is mostly devolved in Scotland, Wales and Northern Ireland but the proposal, as set out in this consultation, relates to policy that in Scotland and Wales is reserved to the UK Government and Parliament. The reservations are those concerned with the creation, operation, regulation and dissolution of types of business association (Scotland Act 1998: Schedule 5 Part II, Section C1; Government of Wales Act 2006, Schedule 7A Part 2, Section C1). We will keep this under review in order to ensure any measures introduced are implemented in a way that is consistent with the allocation of responsibilities under the Scotland Act and Government of Wales Act. We will engage with the Scottish and Welsh Governments in considering responses to this consultation and our next steps.

In Northern Ireland, the Northern Ireland Executive and Assembly have competence to regulate companies (although have consented to a UK wide regime of company law). We consider there would be benefit in having a due diligence requirement that applies across the whole of the UK and will engage with the Northern Ireland Executive in considering responses to this consultation. It will be for the Northern Ireland Executive and Assembly to decide whether a due diligence requirement should be introduced in Northern Ireland.

Rationale

Why focus on commodities?

Forests play a vital role in the lives of people and the planet. They provide livelihoods, fuel and food for more than one billion people², and provide all of us with essential services such as regulating the water cycle, cleaning the air, and preventing soil erosion. Forests absorb carbon, acting as carbon 'sinks' that capture billions of tonnes of climate-warming carbon dioxide per year³. When they are destroyed and degraded, their stored carbon is released into the air. Deforestation is now the second leading cause of climate change globally, after burning fossil fuels, and is responsible for around 11% of all greenhouse gas emissions⁴. Forests are rich in animal and plant species, hosting around 80% of the world's biodiversity on land, and are home to many species found nowhere else⁵. Limiting unchecked deforestation is therefore a necessary step to conserve forests as natural resources and to protect the long-term life and health of the animal and plant species that live within them.

In the last 60 years, more than half of tropical forests worldwide have been destroyed. For the most part this is caused by forests being converted to agricultural land - agricultural expansion drives almost 80% of all deforestation⁶. Agriculture also contributes to the conversion of a range of other types of natural ecosystems, such as grassland, peatland, and wetland^{7,8}, and there is growing evidence that the clearance of natural ecosystems exacerbates the spread of infectious diseases⁹.

Illegal conversion of land makes up a significant proportion of deforestation. Globally, nearly half (49%) of all recent tropical deforestation is the result of illegal clearance for commercial agriculture and timber plantations. In deforestation hotspots, this percentage is considerably higher¹. However, with the exception of timber and timber products, there is currently no overarching legal requirement in the UK for businesses to ensure that the commodities they use have been produced in accordance with local laws.

The UK consumes significant amounts of seven commodities whose rapid expansion is associated with deforestation, often in contravention of local laws: beef and leather, cocoa, palm oil, pulp and paper, timber, rubber and soya. The food we eat, the cosmetics we use, the products we clean with, and the vehicles we use to get around all rely on these commodities. Forest risk commodities are often embedded within other products – for example many animals are fed on soya, so it is embedded in many meat and dairy products, and palm oil is used as an ingredient in a wide range of supermarket products.

What can be done to make sure that commodities are produced more sustainably?

The UK recognises its part in tackling deforestation globally and works at all stages of the supply chain to improve the sustainability of forest risk commodities.

We are signatories to the Amsterdam Declaration Partnership, through which we work with other governments in Europe to improve the sustainability of commodity supply chains. The UK endorsed the New York Declaration on Forests, which aims to reverse forest loss

by strengthening the protection of intact forests and supporting large scale forest restoration. We support businesses in the UK to improve the sustainability of their supply chains, convening industry-led roundtables on sustainable soya and palm oil. Businesses in the bioenergy sector can only access Government support where they can prove that the commodities they use meet sustainability criteria. The Government also provides financial support through its International Climate Finance to accelerate the transition to more sustainable production of key forest risk commodities and create value in standing forests. More broadly, our work driving sustainable growth through resilient global supply chains contributes to the goals of the Paris Agreement and the Sustainable Development Goals.

Our experience over many years has demonstrated that we get the best results for people and for the environment when we work in close partnership with national governments and local communities to reinforce their existing efforts. After all, they are the people who own these vital ecosystems and rely on them for their livelihoods.

For example, the UK played a central role in developing the FLEGT (Forest Law Enforcement, Governance and Trade) Action Plan. This Action Plan worked with governments in timber producing countries to further strengthen the design and enforcement of their forest laws. By prompting producer countries to clarify their laws, it helped international companies to comply with them. Crucially, the plan recognised the role that timber importing countries could play in reinforcing those efforts: it prohibited illegal timber products from being first placed on the market, and required operators first placing timber products on the market to exercise due diligence. We have seen countries around the world begin to adopt a similar approach, for example China and Australia.

This approach is an example of how international actors can work with national authorities to strengthen the design and enforcement of national legal frameworks, which is fundamental to enhancing forest protection in the long term. The strengthening of forest law and its enforcement was a primary reason why deforestation slowed in the Brazilian Amazon between 2004 and 2012¹⁰. Compliance with Brazil's Forest Code alone could lead to an *increase* in forest cover of more than 15% by 2050, if it is properly enforced. Similarly, in Indonesia, lower rates of deforestation between 2012 and 2017 were linked to the introduction of a national moratorium¹¹.

A key question for countries such as the UK, is how can we incentivise everyone involved in the production of these essential commodities to comply with national laws and so increase their sustainability?

What more can be done?

In 2019, we asked an independent taskforce of leaders from business, finance and civil society to provide the Government with advice on what measures the UK could take to make supply chains greener – the Global Resource Initiative. The taskforce consulted over 200 businesses and organisations, and submitted its final recommendations report in March 2020¹². It recognised that there are things that people and governments in consumer countries can do to help slow the loss of forests, identifying 14 practical actions that could be taken by UK Government, business and civil society to address the problem. The Government will provide a response to all of the report's recommendations in due course.

This consultation is designed to inform our response to one of the taskforce's key recommendations: whether to require businesses to undertake due diligence on their supply chains.

The UK became the first major economy to legislate to bring all greenhouse gas emissions to net zero by 2050. The Government has also put in place a framework, through Streamlined Energy and Carbon Reporting, that requires large or quoted UK businesses to report on their greenhouse gas emissions and energy usage in their annual report for financial years starting on or after 1 April 2019. The UK Government was among the first countries in the world to endorse the final recommendations of the industry-led Task Force on Climate-related Financial Disclosures (TCFD) in 2017, and in the Government's Green Finance Strategy (published in 2019) set out an expectation that all listed companies and large asset owners should disclose in line with the TCFD recommendations by 2022.

While the proposal set out in this consultation is associated with reducing the UK's international environmental footprint, we want to understand how best to align our ambitions in a way that will be most complementary for delivery and reporting. Specifically, we are interested in the extent to which there are opportunities to align with companies' reporting under existing international standards, including the TCFD recommendations.

Proposal

The core proposal, on which we are seeking your views through the survey, is as follows:

- Our intent is to ensure that forest risk commodities are produced legally and sustainably
- We are proposing to introduce legislation that would:
 - Make it illegal for businesses in scope to use, either in production or trade within the UK, forest risk commodities that have not been produced in accordance with relevant laws in the country where they are grown
 - 'Forest risk commodities' include those embedded within products
 - 'Relevant laws' include those that protect natural forests and other natural ecosystems from being converted in to agricultural land
 - Oblige businesses in scope to conduct due diligence to ensure that forest risk commodities that have not been legally produced do not enter their supply chain, and to report on this exercise publicly
 - Enable the Government to levy fines and other civil sanctions against businesses that continue to use forest risk commodities that have not been produced legally and/or that do not have a robust system of due diligence in place
 - Require that the Government regularly review the law's effectiveness

- Larger businesses over a turnover and employee number threshold would be in scope of the law – small businesses would not be in scope

Using the law to set a duty on businesses

Over the past decade, governments, businesses and civil society have taken great strides to improve the sustainability of forest risk commodities.

There is growing evidence that while all of these different steps are necessary, they have not been sufficient to tackle the problem. Legislation offers a mechanism the Government can use to mandate action.

The Government is therefore considering introducing a new law relating to supply chains. This would provide clarity and consistency for business, setting a clear requirement in law for the first time. Legislation offers a tool to help us ensure that businesses operating sustainably are not undercut by others, effectively being punished for doing the right thing.

If the Government decided to legislate, it would be our intention to set the framework of the law in primary legislation. This would be followed by secondary legislation setting out details such as what steps businesses must complete. This secondary legislation would be required for the law to take effect. The secondary legislation would be the subject of a further consultation, providing a second opportunity to give your views.

Requiring businesses to ensure that commodities have been produced legally

We propose to introduce legislation that would make it illegal for businesses to use, either in production or trade within the UK, forest risk commodities that have not been produced in compliance with relevant laws of the country in which they are grown. Businesses would be required to have a robust system of due diligence in place, and to report on it, to show that they have taken proportionate action to ensure their supply is legal.

This approach is designed to reinforce the existing efforts of producer countries to enforce their laws, so contributing to the sustainability of all the produce they grow, not just that exported to the UK. This avoids the displacement of unsustainable produce on to other markets. It prevents discrimination against producers following the law and encourages better practices, while not damaging livelihoods. It is also designed to address what many experts consider to be the most damaging and prevalent form of deforestation: illegal deforestation.

The degree to which forests are protected in national laws varies between countries. It is also true that international and company standards for commodities vary. Focusing our legislation on ensuring that commodities have been produced in full compliance with local laws sends a message to other governments that we want to support their efforts to ensure the sustainable use of their natural resources, reinforcing a spirit of partnership. It will also provide a clear operating principle for businesses.

The proposed approach would, for the first time, provide a floor – a minimum standard – that businesses would have to meet: that they are complying with relevant laws. Businesses would of course be free to adopt higher standards, where they are available, to achieve more sustainable outcomes.

Relevant laws

This proposal aims to ensure that commodities are produced in compliance with laws relating to the protection of forests from being converted in to agricultural land. It is these laws that will be in scope in determining whether a commodity has been produced legally.

It is important to consider that forest risk commodities can be produced on land converted from other types of ecosystem. To avoid a situation where by focussing only on forest-related laws producers are incentivised to convert other types of ecosystem, we are proposing that businesses must ensure that they produce commodities in line with laws protecting natural ecosystems more widely.

Targeting key businesses

We are proposing to target this legislation to a relatively small number of larger businesses that use forest risk commodities in production or trade in the UK, and meet an employee number and turnover threshold. We would set the precise threshold in secondary legislation.

This approach would allow us to regulate those businesses who are most likely to be able to send a positive signal to producers. It also minimises the regulatory burden on smaller businesses in the UK whose action in the supply chain would be less likely to have an impact. We are proposing that the law applies to businesses operating in England, Northern Ireland, Scotland and Wales. Existing schemes in the bioenergy sector would continue to apply.

Consultation questions

Section A: About you

Question 1: What is your name?

Question 2: What is your email address?

Question 3: What country are you based in?

Question 4: Would you like your response to be treated as confidential?

- Yes
- No

Question 5: Are you responding:

- On behalf of an organisation
- As an individual

Section B: About your organisation

[Please note this section only applies if responding on behalf of an organisation]

Question 1: What type of organisation are you responding on behalf of?

- A government body
- Non-governmental organisation
- Small or micro business (Less than 50 employees)
- Medium business (50 – 249 employees)
- Large business (250 or more employees)
- Industry association
- Responding on behalf of another type of organisation

Question 2: Please provide your organisation's name.

Section C: About your business

[Please note this section is for business respondents only]

Question 1: Which sector best describes your business?

- Agriculture, forestry and fishing

- Mining, quarrying and utilities
- Manufacturing
- Construction
- Wholesale and retail; repair of motor vehicles
- Transport and storage (inc. postal)
- Accommodation and food services
- Information and communication
- Finance and insurance
- Property
- Professional, scientific and technical
- Business administration and support services
- Public administration and defence
- Education
- Health
- Arts, entertainment, recreation and other services

Question 2: Where is your business headquartered?

- In the UK
- Overseas

Question 3: If your business is headquartered in the UK, please tell us where.

- Not applicable
- Scotland
- Northern Ireland
- Wales
- North East
- North West
- Yorkshire and the Humber
- West Midlands
- East Midlands
- South West
- South East
- East of England
- Greater London

Question 4: If your business is headquartered overseas, please tell us in which country.

Question 5: How many people does your business employ in the UK?

- None
- 1 to 49
- 50 – 249
- 250 – 499

- 500 – 1000
- Over 1000

Question 6: How many people does your business employ globally?

- 1 to 49
- 50 – 249
- 250 – 499
- 500 – 1000
- Over 1000

Question 7: What is your business' annual turnover in the UK?

- 0 up to 10.2 million GBP
- 10.2 million up to 36 million GBP
- 36 million up to 100 million GBP
- 100 million up to 500 million GBP
- 500 million up to 1 billion GBP
- 1 billion and above GBP

**Question 8: What is your business' annual turnover globally?
(assuming 1 USD = 0.7837 GBP)**

- 0 up to 100 million GBP
- 100 million up to 500 million GBP
- 500 million up to 1 billion GBP
- 1 billion up to 10 billion GBP
- 10 billion to 50 billion GBP
- 50 billion to 100 billion GBP
- Over 100 billion GBP

Question 9: Which of the following forest risk commodities do you use in in production or trade in the UK? Please tick all that apply.

- beef
- cocoa
- leather
- palm oil
- rubber
- soya
- none of the above

Question 10: Please list any other forest risk commodities you use in production or trade in the UK.

Question 11: Do you currently have a system in place to ensure that any of the following forest risk commodities have been produced legally? Please tick all that apply.

- beef
- cocoa

- leather
- palm oil
- rubber
- soya
- none of the above

Question 12: Please list any other forest risk commodities where you have a system in place to ensure they have been produced legally.

Question 13: If you have a system in place to ensure that any forest risk commodity has been produced legally, please describe it.

Question 14: Please use this box to share any further information about the systems you use to better understand how forest risk commodities in your supply chains are produced.

Section D: About the proposal

Question 1: Should the Government introduce legislation designed to make forest risk commodities more sustainable?

- Yes
- No
- Don't know

Question 2: Should it be illegal for businesses to use forest risk commodities in the UK that have not been produced in accordance with relevant laws?

- Yes
- No
- Don't know

Question 3: Should businesses in the UK be obliged to have a system of due diligence in place to ensure that the forest risk commodities they use have been produced in accordance with relevant laws?

- Yes
- No
- Don't know

Question 4: Should businesses be required to report publicly on their system of due diligence?

- Yes
- No
- Don't know

Question 5: Should the Government be able to levy fines against businesses that use forest risk commodities not produced in accordance with relevant laws?

- Yes
- No
- Don't know

Question 6: Should the legislation apply to larger businesses, over an employee number and turnover threshold, that use forest risk commodities in production or trade?

- Yes
- No
- Other

Question 7: If you responded 'Other' to Question 6, please expand.

Question 8: Large businesses have existing obligations to report on climate and environment issues including in relation to net zero. To what extent are there opportunities to align the proposal set out in this consultation with businesses' reporting under existing international frameworks [e.g. the recommendations of the Taskforce on Climate-Related Financial Disclosures (TCFD)]?

Question 9: Do you have any further information or comments you would like us to be aware of?

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