

Environment Bill: briefing for Commons Committee

23 November 2020

Use of forest risk commodities in commercial activity (amendment 231, NC31, NS1)

Introduction

Since the Environment Bill was introduced to Parliament, the government has undertaken a [consultation](#) on whether the UK government should introduce a new law designed to prevent forests and other important natural areas from being converted illegally to agricultural land. **The consultation revealed strong public support for action.**

Despite only running for a few weeks, the government consultation received 63,033 responses, demonstrating the strong public interest in this issue, with 99% of respondents agreeing that the government should introduce legislation to make forest risk commodities more sustainable. However, 90% of respondents also stressed that the proposal could go further, with significant numbers of responses highlighting that relevant local laws may not be as strong as international or industry standards and that the proposal should be expanded to other ecosystems and take an integrated approach to the impact of supply chains on the environment and human rights more widely.

Businesses and trade associations indicated their support for legislation, including through consultation responses and an [open letter](#) to the Secretary of State, in which they urge the government to go further and halt all forms of deforestation.

In its [response](#) to the consultation, the government said it would introduce an amendment to the Environment Bill placing new responsibilities on larger businesses using forest risk commodities in their supply chains. Following this, it has tabled **amendment 231, New Clause 31** and **New Schedule 1**, which would introduce a prohibition on the use of illegal forest risk commodities and requirements relating to due diligence and reporting.

Why deforestation must be addressed

There is a compelling [evidence base](#) on why the government must take firm action on deforestation.

About 28% of the UK's overseas land footprint (nearly 6 million hectares) is in countries at high or very high risk of deforestation, with weak governance and poor labour standards. At the same time, about 1.6 billion people depend directly on forests to secure their livelihoods. The food and everyday products we buy could be destroying habitats for endangered wildlife and impacting livelihoods overseas.

The Global Resource Initiative (GRI) Taskforce [recommended](#) in March 2020 that the government should urgently introduce a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation (whether legal or illegal under local laws) on the UK market. The GRI also called on the government to take action to ensure similar principles are applied to the finance industry.

The GRI also recommended that since not all businesses have begun to commit to and implement sustainable supply chains, **a legally binding target to end deforestation in UK supply chains** would provide the necessary signal for a shift in behaviour across the entire industry.

Due diligence legislation is only part of the comprehensive approach that will be needed to deliver deforestation free supply chains. A mandatory due diligence framework should formalise and obligate responsible practices throughout UK market related supply chains and finance, to ensure comprehensive accountability and help prevent deforestation and other global environmental damage.

Comments and questions on the government's approach

New Schedule 1 proposes a limited approach of merely requiring compliance with relevant laws of the country of origin. We welcome the government's commitment to legislate, but to be effective **there are some key areas that must be strengthened**.

This current proposal does not clearly define deforestation nor outline what activities UK supply chains cannot engage in. As the government's proposal only tackles illegal deforestation, it would allow forest destruction if it is legal under local rules. It would not therefore prevent all of the things we eat and buy still being associated with deforestation and conversion of other ecosystems, nor ensure that deforestation and conversion caused by the production of the commodities to which it relates is brought to an end.

This is because forest legislation in critical areas of the world still permits significant amounts of forest to be cut down. For example, the Forest Code in Brazil imposes a basic duty to retain 80% of land in the Amazon as a reserve and to convert 20%. Even if the Code were widely enforced, [which it is not, NGOs calculate](#) that the Code permits up to 88M hectares of forest to be destroyed with potentially very significant impacts on both nature and climate. Forest law in other key countries also contains significant shortcomings.

There is nothing in the clauses to suggest that the government is planning to introduce a cut-off date for deforestation and conversion on the ground, as recommended by the GRI. Instead, the government has [said](#) that it will use its target setting power under the Environment Bill to assess whether statutory long term targets for deforestation would be an appropriate mechanism to drive this change.

This does not accord with the urgency needed to tackle deforestation and falls short of the government's ambition for a world leading approach. The UK has signed up to the Amsterdam Declarations and The New York Declaration on Forests, which committed the signatories to targets to eliminate deforestation from supply chains by 2020. It is therefore entirely justifiable for the Environment Bill, which the government repeatedly says it wants to be world leading legislation, to enshrine a legal cut-off date for commodities that are contributing to deforestation within it.

In the consultation on due diligence on forest risk commodities, there was widespread support for the UK defining what activities its supply chains cannot be complicit in. The need to tackle all deforestation was widely supported by the public, scientists, 21 large UK agribusiness companies, civil society organisations in forest rich countries and UK NGOs.

As the government has its sights set on a world leading new law, its ambition should be strengthened and other measures, such as a binding target to end deforestation in UK supply chains (as recommended by the GRI) should be pursued.

The government's proposed amendments on due diligence would provide high level framework powers with much of the underlying detail to be set out in secondary legislation. This balance between primary and secondary legislation is a key issue for several of the other policy areas covered in the bill. However, it is especially important on the proposed due diligence obligation because of its novelty and the large amount of matters and technical details that will be dealt with by way of further regulation.

Given the emergence of these new proposals in the middle of the bill committee proceedings, we would encourage the government to maintain an active dialogue with stakeholders and parliamentarians both on the policy intent and functioning of the clauses and in subsequent policy development and design of the secondary legislation.

We are concerned that important elements of the overall due diligence structure, including the steps to be taken by way of due diligence and the annual report required to be published by companies, are not subject to any duty to consult and will be subject to very limited parliamentary scrutiny via the negative procedure. It is difficult to see the justification for this.

We encourage the government to publish **updated explanatory notes** to the bill at the earliest opportunity, so that these might be examined alongside the proposed new measures.

We invite the committee to raise the following aspects with the minister in the course of its detailed examination of these proposed amendments.

1. Relevant local laws

Paragraph 2 of New Schedule 1 stipulates that a regulated business must not use a (specified) forest risk commodity in their UK commercial activities unless relevant local laws were complied with in relation to that commodity.

It goes on to define a relevant local law as one which relates to the ownership of the land on which the source organism was grown, raised or cultivated or which relates to the use of that land. **Further detail should be provided on the process for deciding whether a law continues to be relevant or how changes to a relevant law might be dealt with.**

The set of rules that must be followed by those involved in forest conversion should not be limited to land and use rights. They should determine what will be authorised, what is forbidden and, if forest conversion occurs, what conditions need to be followed for rights to access forested land and clear it for another use to be granted.

Certain elements of human rights law relate to the use of land and may form part of local law, but will they be in scope of the measure? Human rights abuses frequently go hand in hand with deforestation and conversion, because the pattern we see time and time again is that people living in forests and savannahs are thrown off the land first, often violently, only for trees to be chopped down and the land to be turned over to agriculture.

2. Free, Prior and Informed Consent

Beyond local laws, it is critical to ensure that the UK requires businesses to have evidence of a process to obtain the free, prior and informed consent (FPIC) of indigenous peoples and forest communities to any activities occurring on their land and local area.

There is a strong body of evidence that shows that such processes are key to effective legal and other compliance. Ensuring strong, productive relationships with local people disincentivises attacks and threats which are frequently used to try to silence those on the frontlines of defending forests and who raise the alarm on forest related abuses and criminality. This is particularly important to fill the gap for the 80% of indigenous and community lands that do not yet have secure legal rights. FPIC is defined under international law, and commitments to full or partial FPIC are included in a diverse array of industry standards, OECD guidance and company commitments.

3. Due diligence system

Paragraph 3(2) of New Schedule 1 sets out the framework of the system for identifying, assessing and mitigating the risk of illegally produced commodities entering the supply chain of a regulated business. Paragraph 3(3) of New Schedule 1 provides the Secretary of State with the power to prescribe further detail about a due diligence system.

According to the [supplementary delegated powers memorandum](#), secondary legislation made under the negative procedure could specify the level to which risk should be reduced by specifying that risk could be reduced to a negligible level.

Paragraph 13(2) of New Schedule 1 states that an enforcement authority will not be permitted to impose a sanction on a business that has breached the prohibition on use of illegal commodities where that business has taken all reasonable steps to implement a due diligence system.

It is unclear why the level of risk (i.e. that it must be negligible) is not set out in primary legislation and why the negative procedure has been chosen for the regulations on the due diligence system. In our view, given the system is at the heart of the government's proposals, it should be subject to public consultation and the associated regulations made through the affirmative procedure. This omission is striking given that the amendments take the same approach as the EU Timber Regulation (EUTR) vis a vis legality but then fail to specify the level to which risk must be mitigated as per the EUTR.

4. Important natural ecosystems

Important natural ecosystems such as [the Cerrado](#) are of crucial ecological significance but may not amount to a "forest" for the purposes of the amendment. **Can the government clarify that commodities from such areas will be within the scope of the legislation?** For example, how will the system work in relation to forest risk commodities grown on savannahs where local laws are frequently even weaker than those which apply to forests? This example underlines the inadequacy of a due diligence system based solely on compliance with local law, as opposed to a system based on international sustainability standards and guidelines.

5. Enforcement

Part 2 of New Schedule 1 relates to enforcement but much of the detail is to be established in regulations. **More clarity is needed as to who the new regulator would be** – would this be a new body and if so on what basis would it be established? Or would the regulator be part of an existing body and if so which one? While setting out some of the underpinning detail on enforcement via regulations may be sensible, **to legislate in the absence of further clarity on the identity and nature of the regulator would be a big leap of faith for Parliament.** Furthermore, it is essential that **the regulator is independent of government,**

yet there is nothing in the government's amendments to suggest that this will be the case.
What assurances can the government give in this respect?

The proposed regulatory regime relies on civil sanctions in the first instance but there is scope to impose criminal sanctions on those businesses that fail to comply with civil sanctions. This gives rise to a number of questions including **the level at which fines will be set**. Fines must provide a dissuasive deterrent to breaking the law, otherwise they will end up being a payment for non-compliance and unless fines are set at appropriate levels, this will increase the prospect of criminal prosecution. It is unclear that the new regulator, whoever they might be, will have adequate resources to undertake such enhanced enforcement activity.

Clarity would also be welcome on whether other potential sanctions such as **seizure of assets and cease to trade orders** will be part of the enforcement regime.

6. Territorial extent

Clause 231 provides for the due diligence obligation to apply across the UK and to UK businesses. **Will subsidiaries of UK businesses fall within scope so that businesses trading and using goods in the UK are covered, not just those headquartered here?**

The government should confirm that the power in Paragraph 7(6) of New Schedule 1 to specify a group of companies to be treated as a regulated person for the purpose of the due diligence obligation **could and will be exercised to capture overseas subsidiaries** of UK domiciled top companies, where those subsidiaries are trading in forest risk commodities. Also, the measure doesn't cover the supply chains of UK businesses where the end product goes elsewhere than the UK. This should be addressed.

7. Reporting

Paragraph 4 of New Schedule 1 requires a regulated business to produce an annual report on its due diligence system. **The government should clarify whether this report is intended to be about the due diligence system itself and how that has been established or whether it will include more critical analysis of the outcomes of that system and what action is planned as a result, including to mitigate any risks identified.**

Reports must be made available to the public but there is a concerning lack of transparency as to how this will be done. Paragraph 4(4) of New Schedule 1 says the Secretary of State will specify in regulations "...the way, and to the extent" reports will be made available to the public. **Instead, the legislation should specify minimum publication requirements, for example on business websites and within annual reports.**

Concerns have also been raised about how difficult it can be to find this information when only published on company websites. **Requiring business to provide a copy of their reports to the regulator which can gather and hold the reports centrally on a publicly accessible register would improve transparency, accountability and enforcement.**

8. Timetable

Clarity on the delivery timetable is needed. For example, when will the clauses be brought into force and when will the prohibition in Paragraph 2 of New Schedule 1 bite? The pressing nature of the deforestation risk for nature, climate and people means a clear and ambitious timetable is essential, including on secondary legislation.

9. Finance

We note that the government is not proposing to include finance in the scope of the measure, which is disappointing. Action in this space is urgently required. We understand the government has focused on The Taskforce on Climate-related Financial Disclosures as a way of addressing the contribution of finance institutions to deforestation. However, that task force, even if mandatory, is a system of reporting and does not require any mitigation of impacts as does due diligence. Also, its scope is focused on climate not nature. A separate Task Force on Nature-related Financial Disclosures is at a very early stage of development and **neither regime is an effective alternative to a robust due diligence system for the financial sector, as the GRI recommendations make clear.**

10. Biofuels

The government is proposing to exclude certain biofuels from the measure: namely a forest risk commodity, or a product derived from one, which is deemed to be waste (within the meaning of article 2(1) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072) – for example, used cooking oil) and is for renewable transport fuel. **No justification is provided for this and we are concerned that this would create an unhelpful legal loophole** in relation to the production of goods whose sustainability (land use) criteria have often been widely criticised as too weak.

11. Review

Paragraph 17 of New Schedule 1 provides a review mechanism to allow the government to assess the effectiveness of the primary and secondary legislation. This is important but **must include a requirement for the legislation to be revised and uplifted as necessary as a result of the review**, so that it can be adjusted to address any legal or governance changes in forest rich countries and respond to public support for further action. The review should also require the Secretary of State to **seek and consider independent advice.**

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On behalf of Greener UK, Wildlife & Countryside Link, the CORE coalition and Global Witness



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