

Environment Bill Committee briefing: due diligence on forest risk commodities and global footprint

8 July 2021

This briefing is on behalf of the environmental coalitions [Greener UK](#) and [Wildlife and Countryside Link](#) and covers the provisions on due diligence on forest risk commodities.

In the 25 Year Environment Plan, the UK government articulated an ambitious set of goals and actions for the UK, including committing that “our consumption and impact on natural capital are sustainable, at home and overseas”. The Environment Bill should reflect this commitment but does not currently do so adequately.

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 called on the government to ensure that 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 industry behaviour.

It recognised that the focus on forests and land conversion was a “first step only” and that “wider environmental and human rights impacts associated with commodity production and trade must also be addressed and the lessons extended to other food commodities and beyond, for example extraction/mining commodities”.

In 2020, the UK government [consulted](#) on whether it 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.

Ninety per cent of respondents stressed that the proposal could go further, with a significant number of responses highlighting that relevant local laws may not be as strong as international or industry standards. Many respondents suggested the proposal should be expanded to cover all deforestation, apply to other natural ecosystems and take a more integrated approach to the impact of supply chains on the environment and human rights.

The government [amended](#) the bill in the Commons and Schedule 16 now includes a new prohibition on the use of certain commodities associated with illegal deforestation, and requirements for large companies to undertake due diligence and reporting. However, the provisions do not go far enough in progressing either the GRI recommendations or the level of action demanded by the consultation. They must be strengthened to tackle the growing problems caused by deforestation and to drive action to significantly reduce our global footprint.

Due diligence legislation is only part of the comprehensive approach that will be needed to deliver deforestation free supply chains and to significantly reduce global footprint impacts more broadly. 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.

While a welcome first step, the proposed forest risk commodities framework should also:

- Commit the government to introducing a legally binding target to significantly reduce the UK's global footprint by 2030.
- Address all deforestation linked to UK forest risk commodity supply chains, whether regarded as legal or illegal under local laws.
- Include a mechanism to progressively improve the framework, its implementation and enforcement.
- Establish equivalent obligations for financial institutions.
- Ensure the right to free, prior and informed consent of affected indigenous peoples and local communities is respected.
- Establish clear and effective due diligence requirements, including clarity on the acceptable level of risk, public reporting and adequate parliamentary oversight.

Matters of due diligence in forest risk commodities are devolved to Northern Ireland. We therefore welcome DAERA's decision to extend due diligence provisions within the bill to Northern Ireland. These matters remain subject to legislative consent by the NI Assembly, which is expected to be debated after summer recess.

We would welcome clarity on how Northern Ireland's unique position will be accounted for in the establishment of the UK's due diligence system. It is expected that due to legislation contained within the NI Protocol – including the Illegal Timber and FLEGT Regulations – Northern Ireland will also be subject to the [forthcoming EU system](#) for forest risk commodities. **DAERA and Defra must ensure continued and active engagement with the EU and provide clarity on how the systems will interact.**

Amendments we strongly support

Amendments 260B + C: parliamentary procedure (Lord Randall of Uxbridge)

Amendments 260B + C would upgrade the parliamentary procedure (to affirmative) for regulations relating to the due diligence system. Given the due diligence system required under Paragraph 3 of Schedule 16 will be central to the effectiveness of the schedule, any regulations made to specify requirements for this system should be subject to the affirmative procedure. This is essential given the public interest in this important new provision and the need for adequate parliamentary oversight.

Amendment 264A: addressing 'legal' deforestation (Baroness Meacher)

The current proposal only addresses 'illegal' deforestation, as it only restricts forest risk commodities that have been produced in contravention of 'relevant local laws'. However, all deforestation – legal or illegal – has the same potential negative ecological, climate, human rights and sustainability impacts. In fact, while circumstances vary between producer countries and with spates of agricultural expansion, recent analysis indicates that [almost a third of global tropical deforestation](#) is considered 'legal' under local laws.

Commercial agriculture remains the [largest driver](#) of deforestation and ecosystem conversion, with large scale commercial agriculture (primarily cattle ranching and soy and oil palm plantations) the [most prevalent driver](#) of tropical deforestation. An area of land [almost the size of the UK itself](#) (and growing) is needed each year to produce only seven of the forest risk commodities we consume. Given this, addressing only 'illegal' deforestation linked to the consumption of forest risk commodities would ignore a huge part of the UK's global deforestation footprint.

Laws can also change – what is illegal today may be legal tomorrow. The changes in Brazilian forest laws over the past decade, and the resulting legalisation of deforestation, provide [a telling example](#). Several further alarming legal reforms are currently under consideration by the Brazilian Government. These put millions of hectares of forest at risk, including 115 million hectares of currently protected indigenous territories and an additional 178 million hectares of ‘legal’ deforestation on private land. This would push the Amazon towards a dangerous tipping point and sow the seeds for long term social conflict. In this context, were the UK government to introduce a law which allows ‘legal’ deforestation, and rewards it with access to the UK market, this could effectively signal the UK’s endorsement of the Bolsonaro Government’s deliberate destruction of the Amazon.

We welcome amendment 264A, which seeks to introduce a requirement that a regulated person does not use forest risk commodities, or products derived from those commodities, in their UK commercial activities if they are derived from land that is deforested after the commencement of Schedule 16 or an earlier date set by regulation. It also provides for an exception for forest risk commodities produced by indigenous peoples or other communities with customary land use rights according to traditional farming practices.

Amendment 264ZA: impacts on indigenous peoples (Baroness Jones of Whitchurch)

Land conversion for agricultural purposes is often associated with negative human rights impacts. Beyond local laws, it is therefore critical to ensure that the UK requires businesses to have evidence that the free, prior and informed consent (FPIC) of indigenous peoples and forest communities was obtained in relation to the production of forest risk commodities on their land and local area.

There is a strong body of evidence that shows that such processes are key to effective legal compliance and good governance practices, and that respecting the tenure rights of local communities reduces deforestation risks. 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 per cent 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.

We support amendment 264ZA which seeks to introduce a requirement that forest risk commodities used in UK commercial activities must not be produced in contravention of the right to free, prior and informed consent.

Amendment 265A: finance (Baroness Parminter)

Schedule 16 does not address the financing behind deforestation. In March 2020, the [Global Resource Initiative Taskforce](#) recommended that the UK should require companies to undertake checks on deforestation risk in their supply chains and recommended that similar measures should apply to finance. The government chose to only cover supply chains, responding that UK finance institutions can use the new information gained from companies undertaking due diligence reports to inform their decisions. Experience has shown that financial institutions are failing to act on [extensive evidence](#) of deforestation risk associated with their financial activities and will not do so unless required to by law.

This is particularly important, as broad based measures on finance such as the Task Force on Climate Related Financial Disclosures or similar efforts on nature and biodiversity (like the Task Force on Nature Related Financial Disclosures) are ill suited to the specific issues related to deforestation and are unlikely to curb the financing of deforestation.

The bill should therefore specify that UK finance institutions must not provide financial services to commercial enterprises linked to deforestation and human rights abuses.

This would place comparable due diligence requirements on finance institutions and mean banks are following the same rules as their clients. It would also help build credibility of UK financier credentials on deforestation. When banks and investors make headlines for their links to deforestation in their mainstream activities, this undermines the City of London's efforts to position itself as the green finance capital of the world.

We support amendment 265A which would bring finance within the scope of this measure.

Amendments 265B, 265C and 265D: review of due diligence scheme (Lord Randall of Uxbridge)

We support these amendments which seek to introduce a requirement that the Secretary of State must take the steps identified through a review to improve the effectiveness of Schedule 16.

We welcome Paragraph 17 of the Schedule which includes a requirement for the Secretary of State to review the effectiveness of the forest risk commodities framework every two years, and to table before Parliament and publish a report of the conclusions.

However, there are no requirements regarding the quality, transparency or independence of this review. Nor is there a requirement to address any deficiencies or weaknesses identified by a review, or to make any needed improvements to the content, implementation or enforcement of the forest risk commodities framework.

Given the novelty of the due diligence framework and the fact that much of it will be set by secondary legislation, it is important that the review procedure ensures that, where deficiencies are identified, there are clear procedures which result in improvements to the framework.

This would help ensure that the measure is progressively improved over time and keeps pace with other legislation being developed, including in the EU. It would also enable the due diligence framework to be adjusted to address any deregulation or undermining of protections for forests in producer countries.

The Secretary of State should be required to seek and consider independent expert advice and consult with stakeholders when proposing changes to the framework.

Amendment 293B: requirement to set a global footprint target (Lord Randall of Uxbridge)

The Environment Bill is silent on how the UK government intends to address our global footprint. It does not therefore deliver on the commitment in the 25 Year Environment Plan to ensure "our consumption and impact on natural capital are sustainable, at home and overseas".

In its 'Biodiversity in the UK: bloom or bust?' [report](#) published on 30 June, the Environmental Audit Committee recommended that the government should set a target to reduce the UK's global environmental footprint.

[New evidence from WWF](#) found that as a nation we need to reduce our global footprint by three quarters if we are to live within our planetary means.

The report highlights that:

- Human impacts on the natural world are driven by over consumption, unsustainable extraction rates, and by the methods we use to produce material goods.
- The UK is a particularly large consumer of products with a major environmental impact.
- The report found that the UK needs to reduce its ecological footprint by 60 per cent, material footprint by 38 per cent, biomass footprint by 48 per cent, nitrogen footprint by 89 per cent, phosphorus footprint by 85 per cent and carbon footprint by 85 per cent.
- Significant reductions in the UK's footprint should not be interpreted as meaning that the UK's economy must shrink, or that the wellbeing of UK citizens must be reduced. With very few exceptions, the targets proposed are about doing things differently.

If the bill continues to exclude measures to address the UK's global environmental footprint, this would be a significant missed opportunity.

We strongly support amendment 293B which would require the government to set a target to reduce global footprint and would provide it with the flexibility to develop that target following Royal Assent of the bill.

Amendment 264B: level of risk (Baroness Sheehan)

We support amendment 264B. By introducing an estimation of the level of risk (a 'negligible' level), the conduct of due diligence will be in line with the aim of Schedule 16 which is to prevent illegal forest risk commodities from accessing the UK market. Negligible risk should be understood to apply when the application of the due diligence system shows no cause for concern. Without clarification of the standard to which risks must be mitigated, it will be unclear for UK businesses what their responsibilities are when risks are identified by the due diligence system. This clarification will avoid confusion and provide a clear standard to guide the efforts of UK businesses.

Amendment 265ZA: consultation on annual reports (Baroness Sheehan)

The Secretary of State should be required to consult with stakeholders when making regulations on the content and form of annual reports on the due diligence system and how such reports are to be made publicly available. **We support amendment 265ZA which would require the Secretary of State to consult relevant interest groups before making regulations under this part of the Schedule.**

Amendment 265AA: necessary steps (Baroness Sheehan)

Schedule 16 contemplates the potential for civil sanctions to be issued for failures to comply with the Schedule's requirements, except where a regulated person "took all reasonable steps to implement a due diligence system". This exception to liability is cast too broadly and potentially undermines the effectiveness of the due diligence obligations.

The term “reasonable steps” does not provide legal certainty to either the regulated person or the enforcement authority. In addition, if efforts to implement a due diligence system will provide a legal protection to the regulated person for breaches of the requirements in paragraphs 2(1) or 2(2), the term “reasonable steps” would not provide sufficient force to the regulated person’s obligation to implement an appropriate due diligence system and would create a potential loophole for wilful non-compliance. **We support amendment 265AA which would require a regulated person to take the steps necessary to implement an effective due diligence system.**

Comments on other amendments

Amendments 263 and 264: coverage of protection (Lord Lucas)

We welcome **amendment 263**. The production of forest risk commodities is linked to the [conversion and degradation of natural ecosystems other than forests](#), like savannahs, wetlands, peatlands, grasslands and mangroves. While we note that the due diligence provision is intended to focus on commodities which pose a risk to forests, it does not discriminate based on where they are grown. There is no policy justification to limit those provisions to forests when other natural ecosystems are under [the same pressures from commodity production](#) and provide the same or greater [biodiversity](#) and [climate benefits](#). Similarly, we welcome the principle of **amendment 264**, but note that industry standards such as the [Accountability Framework Initiative](#) set a cut-off date of 2020.

Amendment 265: authorised providers (Lord Lucas)

We do not support amendment 265. It is far from clear what being an “authorised provider” of commodities would mean in practice. The amendment is silent on the criteria that the Secretary of State will use to designate a company as an “authorised provider” and on how the government would maintain oversight of any such providers. Nor do we support the establishment of a two tiered system of due diligence standards or the outsourcing of due diligence obligations to third parties.

For more information, please contact:

Ruth Chambers, senior parliamentary affairs associate, Greener UK
e: rchambers@greener-alliance.org.uk
t: 020 7630 4524

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