

Size of Wales Response to DEFRA Consultation Due Diligence

1. Question 7 – Answer other

Business of all sizes

The proposal should apply to all businesses of all sizes. Under the OECD Guidelines on Multinational Enterprises, the UK is required to ensure that all businesses are addressing their environmental and human rights risks. This is important in order to create a business culture that sees no business as exempt from acting to reduce environmental and human rights harms. This approach also avoids complex loopholes and streamlines compliance and enforcement. Consistent with the OECD approach, the law should apply to all businesses in the supply chain. Guidance should then be provided to regulators to focus their enforcement efforts on businesses that have the highest level of risk, exposure or contribution to forest destruction and related harms. This would avoid placing undue burden on smaller businesses.

2. 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)]?

There is a gap in current climate and finance initiatives, including the TCFD and the proposed Taskforce on Nature-Related Financial Disclosures. These initiatives rely on a business reporting on its net carbon emissions from its planned activities. The challenge with forest-risk commodities is that many of the businesses linked to deforestation already have zero deforestation commitments. Their exposure to deforestation often is not planned but arises from a failure to undertake adequate due diligence to identify, mitigate and prevent the risk of deforestation in their supply chains or financing. They are therefore not captured by TCFD reporting. Only by legislating to require rigorous due diligence will companies be required to take action to tackle their deforestation risks.

3. Question 9

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

Size of Wales welcomes DEFRA's consultation on due diligence on forest risk commodities. This represents an important opportunity to end the UK's global deforestation footprint.



Fast and deep cuts to global emissions are needed, and trees and forests are an essential part of the solution. An estimated 18 million hectares (44.5 million acres) of forest are being lost globally every year. That is roughly nine times the size of Wales, every year. Global deforestation itself is now estimated to account for 10-15 per cent of global manmade greenhouse gas emissions. The evidence is clear that stopping global deforestation and restoring degraded forests is critical to limiting global temperature rises to 1.5°C above pre-industrial levels, and the Intergovernmental Panel on Climate Change (IPCC) has stressed that we now have less than 10 years left to act.

The UK has an opportunity to show global leadership and drive forward this agenda, particularly in the run up to COP-26. If the UK passes a strong law, then others will likely follow. Furthermore, with 87 per cent of the public wanting action on deforestation, there is a growing voice to support commitments on zero deforestation. Alongside which are the now growing calls from the public, NGOs and private sector for a green recovery that must include action on deforestation.

Furthermore, whilst the current COVID-19 pandemic cannot be attributed to deforestation, previous disease outbreaks can and this is also one of the growing areas of concern in terms of likely impacts of climate change. There is growing evidence that stopping deforestation can prevent pandemics - to reduce the risk of future COVID-19 like pandemics, we must address deforestation.

Key recommendations

1. Role of devolved nations

Although business regulation comes under UK government regulatory powers, certain environmental issues are devolved issues and authority lie with the Welsh Parliament. It is not clear whether due diligence on forest risk commodities will be included in the proposed UK Environment Bill. Aspects of the draft bill will apply in Wales but only in relation to reserved matters. However, the scope of the draft Bill could be extended to cover devolved areas if the Welsh Government chooses to adopt a joint approach with the UK Government.

What we want to ensure is that there are regulatory standards across the UK that ensure a level playing field. However, these common standards must not signify a race to the bottom when it comes to issues such as environmental protection and human rights.

Any environmental governance framework for Wales must align with Wales' Wellbeing of Future Generations and Environment Acts and appropriate consultation must be carried out with key stakeholders in Wales.

2. Focussing on all types of deforestation

Size of Wales supports indigenous people and local communities in South America, Africa and South East Asia. They have shared with us their concerns that currently deforestation is occurring on their territories due to a weakening of national environmental standards in their countries. The current proposal from DEFRA refers to only illegal deforestation as defined by other countries and does not include other important laws such as indigenous land tenure. Only half of global deforestation would be covered by this definition and the current proposal would still allow UK businesses to financially reward, incentivise or profit from forest destruction, if it is legal in the country where it occurs. This is particularly worrying when we look at countries such as Brazil where the government is rolling back important laws and forest enforcement systems. This proposed law could reinforce these negative practices.

Instead, the UK government should adopt a single deforestation-free standard which would make it easier for businesses and communities to understand and uphold. This is the approach that the UK has taken to issues such as bribery and corruption, wildlife protection and wildlife trafficking where it has clearly defined and outlined what harmful practices UK businesses will not encourage or engage in – irrespective of what local rules allow. The UK government should heed the lessons learned from industry itself. Over the last decade or more, industry standards and accountability mechanisms have focused on stopping deforestation as a whole, rather than only that defined as illegal under local laws. The UK has also committed to this approach under the New York Declaration on Forests and the Amsterdam Declaration Partnership. A law that commits the UK to adopting deforestation-free supply chains and finance is also easier for communities and business to understand and uphold. It could draw from the internationally recognised Accountability Framework initiative or government could form a science-based panel to define specific commodity-based standards.

3. Adhering to international norms

The law needs to recognise international norms and human rights standards, particularly the need for free, prior and informed consent (FPIC) of indigenous peoples and local communities. This would recognise that FPIC is a key mechanism for preventing deforestation and included in industry guidance and standards, and cases filed under the Roundtable on Sustainable Palm Oil, the OECD Guidelines on Multinational Enterprises and the World Bank accountability mechanism. This is vital to end the violence against forest defenders. The law should address all forest-related human rights harms. We are concerned by the rise in threats against environmental defenders worldwide, particularly in Latin America, where people are often risking their lives to defend their territory and their precious forests which are the lungs of the world. If indigenous peoples and forest communities are aware of, and consent to activities happening in their area and have a meaningful say in how they proceed, the

likelihood of deforestation and violence is much lower. It also ensures that businesses moving out of deforestation do not encroach onto existing communities' land.

The law should include repercussions for businesses whose forest risk commodity supply chains or financing are connected to severe human rights harms. It should also include zero tolerance for threats or intimidation against forest defenders

4. Including Finance

A key recommendation of the UK Government Taskforce (Global Resource Initiative) was that a due diligence obligation on deforestation should cover finance. According to research carried out by Global Witness, the UK was the single largest provider of international finance between 2013-2019 to the six largest agri businesses. To end UK complicity in imported deforestation, it is imperative that UK businesses, including finance, all follow the same set of rules. Similarly, the UK efforts to lead the world on green finance will be undermined if its banks are simultaneously making headlines for financing linked to forest destruction.

5. Penalties

The law should include penalties that are sufficiently strong to deter harmful practices. They should also include options for communities harmed by deforestation to seek redress. Penalties should include not just fines, but also criminal charges and civil liability. The law should also assign specific accountability to individual company officers – which has been shown to be an effective approach to corporate responsibility. We would like to see a shift from soft law towards hard penalties. Experiences in France with the Devoir de Vigilance law, the Corporate Social Responsibility (CSR) Directive Implementation Act (2017) and the Child Labour Due Diligence Law from Netherlands provide useful examples of this approach.

6. Timing

We are experiencing a climate crisis and we need to act quickly in order to fulfil our Paris commitments. The UK government has an opportunity to show global leadership and take rapid action on this issue. In order to have impact, the law needs to take effect by 2023. Already, hundreds of global businesses have failed to meet their voluntary commitments to end their contribution to deforestation by 2020. The threats to forests are immediate, urgent and all too often, irreversible. The law will be ineffective if it delays accountability for businesses.

7. Lack of inclusion of coffee

The current proposal does not include coffee as a forest risk commodity. The major concern with regards to coffee and deforestation appears to be new higher yield coffee variants that are sun grown. According to the Rainforest Alliance, this leads to farmers removing trees, higher demands outstripping current land capacity and as a result coffee based deforestation is set to increase in the future.

8. Transparency and Oversight

Given the complex nature of global supply chains, it is essential that the proposed law establishes a body to oversee the implementation of and compliance of the proposed bill. There needs to be an independent, transparent and public complaints mechanism. This needs to be accessible to the forest dwelling communities experiencing deforestation as well.

9. Holistic approach

We hope that the UK adopts legislation and introduces policies to implement the wide-reaching recommendations of the Global Resource Initiative report published in March 2020. The recommendations included

Act at home:

- Publish a Strategic Sustainable Commodity Action Plan, by Autumn 2020, setting out actions for government, business, finance and other stakeholders;
- Introduce a legally binding target to end deforestation within UK agricultural and forestry commodity supply chains, as soon as practicable, by no later than 2030, beginning with commodities and derived products that contribute most significantly to deforestation before extending to other supply chains;
- Introduce a mandatory due diligence obligation on business and finance, strengthen and extend mandatory public procurement requirements and promote mass market business engagement, beyond the leaders, including through a new sustainable food service sector plan.

Act globally:

- Convene a global call for action on deforestation and sustainable supply chains in the lead up to COP26, to build long term multilateral partnerships for collective action between producer and consumer governments, companies, finance institutions, farmers, foresters, forest communities and indigenous peoples, beginning with the development of shared roadmaps for agricultural and forestry products in the Biomes/ landscapes of greatest shared risk and shared benefit, for nature and people;
- Mobilise global funds, public and private, to tackle deforestation and land-use conversion and support sustainable production and trade in agricultural and forestry products.

About Size of Wales

Size of Wales is a Welsh charity that brings people together in Wales and beyond to help protect two million hectares of tropical forests (the size of Wales), helping to reduce deforestation as part of Wales' response to the challenge of climate change. We also support tree growing initiatives around the world and raise awareness about how vital 8



tropical forests are for us and our climate as well as for the wildlife and people who live in them. We work in schools and colleges to engage children and young people in understanding and sharing responsibility for the protection of the world's forests. We work with businesses, government and communities in Wales linking them with specific tropical forest areas, helping them to raise funds for the projects working to conserve those areas and doubling their fundraising efforts with our match fund.

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