

Defra Consultation on Due Diligence

Response from The Royal Society for the Protection of Birds



About us

The RSPB is the UK's largest nature conservation charity, with over 1.2 million members and more than 200 nature reserves across the UK. We have over 2000 employees, including a policy and advocacy team that covers policy areas ranging from nature-based solutions to climate change, wildlife friendly agriculture, Overseas Territories, conservation projects abroad to invasive species. We also play a leading role in Birdlife International, a worldwide partnership of nature conservation organisations that work together in advocating and carrying out conservation actions.

Summary

The case for urgent action to end tropical deforestation is indisputable. Over a decade's worth of voluntary corporate initiatives and non-binding public-private commitments have not delivered the changes needed to turn the tide of deforestation. Rates of forest loss are on the rise, and commodity agriculture continues to be the leading cause of global forest loss. On top of exacerbating the climate and biodiversity crises, deforestation also increases the likelihood of zoonotic disease emergence¹.

The UK is a key consumer market for commodities associated with deforestation, ecosystem conversion and human rights risks. RSPB and WWF's 2020 [Riskier Business](#) report found that an average annual area of 21.3 million hectares was required to supply the UK's with just seven commodities between 2016 and 2018. This represents an increase of 15% of the UK's overseas land footprint compared to our [2011-2015 analysis](#). The RSPB therefore welcomes government proposals to address the UK's overseas deforestation footprint, supports the introduction of legislation to require businesses to assess and mitigate deforestation in their global supply chains and welcomes the opportunity to respond to this consultation.

The UK Government, as host of the upcoming 2021 UN climate summit in Glasgow, and incoming G7 President has expressed its ambition to be a global environmental leader. It has signed and spearheaded an ambitious [Leaders Pledge for Nature](#), and at the UN Biodiversity Summit on 30th September, the Prime Minister said, "We are removing deforestation from our supply chains". If these claims of leadership are to be credible, the UK will need to take forward the [Global Resource Initiative Task Force's recommendation](#) to introduce a due diligence obligation that meets the scale and urgency of the challenge.

The Environment Bill provides a timely and appropriate legislative home for a due diligence obligation. In light of the legislative timetable, the commitment to tackle the UK's global environmental footprint in the 25 Year Environment Plan, existing international commitments (including the [Amsterdam Declarations Partnership](#) and the [New York Declaration on Forests](#)) and the unfolding public health crisis, we urge government introduce a due diligence obligation so as to ensure deforestation, conversion and human rights abuses are removed from UK supply chains by the end of 2021, with risks and impacts removed from UK supply chains in practice by the end of 2023 at the latest.

Below, we provide brief comments on five aspects of the proposal: implications for devolved administrations, the legal basis, scope, enforcement and the review mechanism. The final section of this submission provides answers to the questions set out in consultation survey.

¹ See [Gottdenker, N.L., et al. Anthropogenic Land Use Change and Infectious Diseases: A Review of the Evidence. EcoHealth 11, 619–632 \(2014\).](#)

Devolved Administrations

Whilst we welcome the Government's proposal and this consultation being for all countries of the UK, it is hard to see from the consultation documents whether consideration has been given to country-specific issues. The Consultation (page 3) does explain that

“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...²”

And goes on to explain that *the Northern Ireland Executive and Assembly have competence to regulate companies*³.

However, the proposal does not provide details of any discussions to date. Whilst noting the retained area of business set out above, due to devolved competencies for environmental policy it would be better for any Government policy and legislation to be co-designed. It is also not currently clear how any Northern Ireland Protocol requirements would be taken into account nor whether there might be issues within the UK Internal Market Bill provisions. In order to be effective, the obligation will need to have effect across all four countries of the UK. This means accounting both for devolved policy competencies and—given the substantive focus of the obligation—any current or future rules affecting the movement and sale of goods within the UK. We would welcome greater clarity about how these important implications and the Devolved Administrations will be considered.

Legal basis

This proposal sets a standard that is based on producer country laws. Solely relying on the law of the country of production as the basis for a due diligence obligation is a lowest common denominator policy that would not achieve zero deforestation within the timescales necessary to halt the loss of nature globally. Local law is subject to change, and in places where laws are robust, poor governance, land rights disputes and enforcement challenges can stand in the way of sustainability.

RSPB's biggest concern relates to the risk of backsliding, or regression of this standard, in the event of a weakening of forest laws and protections for designated conservation areas in producer countries. Recent developments in Brazil and Indonesia demonstrate that this is not just a perceived risk, but a very real and immediate threat in critical landscapes:

- In May 2020, the Brazilian Congress debated a Bill, [PL-2633/2020](#) (known as the 'land grabbing bill') that would legalize encroached land in the Amazon and grant amnesty to many current illegal settlers. The vote was postponed following overwhelming pressure from the international business community (British and European threatened to [boycott](#) Brazilian products if the bill passed) and European governments, but the bill has not been scrapped and may eventually return to Congress.
- Enforcement of forest laws has become more difficult in Brazil amid [funding cuts](#) targeting the agencies tasked with forest monitoring and law enforcement. This has continued despite unprecedented and catastrophic fire seasons in 2019 and 2020.
- In February 2020, the Indonesian Government issued a [new regulation](#) that would undermine a requirement for wood exporters to verify that their wood comes from legal and sustainably managed sources, arguing that this was necessary to increase economic competitiveness in the face of the COVID-19 pandemic. The regulation has since been shelved.

² As set out in Scotland Act 1998: Schedule 5 Part II, Section C1; Government of Wales Act 2006, Schedule 7A Part 2, Section C1

³ We note that NI have consented to a UK wide regime of company law, but it does appear to still have competence to diverge.

It is concerning that the proposal does not set out how the risks of regression will be addressed and minimized. The UK should not be complicit in continued deforestation, and crucially, UK businesses and financial investors should not continue to profit from deforestation and ecosystem conversion, regardless of producer country laws.

A due diligence law must go beyond legality and aim to eliminate all deforestation, natural habitat conversion and human rights abuses linked to UK imports. There are precedents for the UK setting its own standards for environmental and social harm it will not tolerate in the Ivory Bill, the Bribery Act, and regulations concerning the Trade in Endangered Species. The [Accountability Framework Initiative \(AFi\)](#) provides guidance, definitions and tools to help stakeholders operationalize deforestation-free supply chains, and various mechanisms exist in key producing country landscapes that are working to achieve them: [jurisdictional approaches](#), biome-wide moratoria (such as the Amazon Soy Moratorium), and public-private partnerships driving landscape-scale change, many of which are already supported by UK International Climate Finance. A focus on eliminating deforestation, conversion and human rights abuses from supply chains would reinforce the UK's environmental leadership on the international stage.

Scope

- i. **Scope of businesses** – The legislative proposal suggests that only large businesses, and only a relatively small number, will be targeted. We argue that it is appropriate and desirable to include all businesses in the scope of this law to create a level playing field and to avoid possible [loopholes](#) (for example, large companies could use or create subsidiaries to fall under a certain turnover or employee threshold and thus to avoid being within the regulatory scope). The [OECD Guidelines for Multinational Enterprises](#) (the only multilaterally agreed and comprehensive code of responsible business conduct that governments, including the UK, have committed to promoting) stipulate that all businesses should undertake responsible conduct. This is also spelled out in the [OECD-FAO Guidance](#) manual for agricultural commodities. To avoid placing an undue burden on small businesses, enforcement could prioritize those businesses exposed to the highest levels of deforestation risk or those with the greatest market share. It should not be considered an undue cost for small and medium enterprises to avoid illegal products.
- ii. **Human rights** – The Global Resource Initiative made a clear recommendation that includes human rights within the scope of a due diligence obligation. We appreciate that the Environment Bill's mandate is perhaps not broad enough to address all the social impacts associated with deforestation but believe it would be appropriate and necessary to write requirements for [FPIC](#) (Free, Prior and Informed Consent sought from indigenous peoples and local communities) into the law. The UK could draw on how FPIC is articulated in international law. Furthermore, FPIC is recognized as a key mechanism for combating deforestation and outlined 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.
- iii. **Finance** – The proposal makes no mention of the financial sector. The Global Resource Initiative's recommendations set out that the financial sector (institutional lenders and investors, including banks, insurance companies, pension funds, etc.) should be required to exercise supply chain due diligence. RSPB strongly supports the inclusion of the financial sector in a due diligence obligation. The UK is home to some of the world's biggest banks, some of which have been found to be financing deforestation. Global Witness's 2019 [investigation](#) revealed that two of the UK's big four banks, Barclays and HSBC, along with Standard Chartered, provided tens of billions of dollars in financing between 2013 and 2019 to companies either directly or indirectly involved in the destruction of the largest rainforests in the world.

The UK has chosen finance as a key theme of UNFCCC COP26, and has committed political capital and resources to driving forward the green finance agenda. The UK's efforts to lead the world on sustainable finance will not be credible if UK banks continue to be linked to forest destruction.

- iv. **Ecosystems** – The proposal should explicitly include the conversion and degradation of carbon-rich and biodiversity-rich ecosystems beyond humid tropical forests in its definition of deforestation. The [Accountability Framework Initiative](#) provides clear core principles, science-based definitions and guidance on different ecosystems that the due diligence obligation should cover.

Brazil's success in reducing deforestation in the Amazon between 2006 and 2013 has arguably come at the cost of displacement of deforestation to the neighbouring Cerrado and Chaco biomes⁴ in Brazil, Bolivia, Paraguay and Argentina. Seasonally tropical forests, dry forests and savannahs including the Cerrado (50% of which has already been converted) and the Chaco biomes are experiencing alarmingly high deforestation rates and it is vital that a UK due diligence obligation address deforestation and habitat conversion jointly.

- v. **Other impacts** – Deforestation is an urgent and serious issue, but it is just one of many harmful environmental impacts of the agricultural commodity trade. Tackling deforestation should be the first step in reducing the UK's wider global environmental footprint due to the urgency of the issue and the fact that tools and mechanisms to measure and monitor progress on deforestation already exist today. However, the due diligence mechanism should aim to progressively include wider environmental impacts of UK commodity trade over time, including those linked to water, climate, biodiversity and chemicals. Full due diligence practices will not only benefit society more widely by addressing market failures but can also benefit businesses themselves by building resilience in the agri-business sector, strengthening social licence to operate and securing a sustainable supply of products in the future.

Enforcement

A new due diligence obligation will only be effective if the government sets out key requirements, in detail, for business implementation. An important benefit of this legislation is that the components of due diligence can be streamlined and standardized, allowing for better benchmarking within and between sectors. The key elements of a due diligence law are:

- risk assessment;
- due diligence plan;
- monitoring and compliance;
- transparent reporting; and
- enforcement.

Effective and dissuasive sanctions and remedies must be put in place for failure to comply. Penalties must be sufficient to minimize bad practices and act as an effective deterrent to others. Due diligence plans and compliance must be overseen by an independent regulator (and not left to enforcement by the producer country). This could be achieved by an existing body⁵ (such as the Competition and Markets Authority) or a new body but requires sufficient resources and expertise. Enforcement should also ensure that people who have suffered loss or violations of their

⁴ See <https://forestdeclaration.org/the-latest/brazil-a-history-of-success-but-a-future-of-uncertainty>, and [Rausch et al., Soy expansion in Brazil's Cerrado, Conservation Letters, Volume 12, Issue 6 \(2019\)](#).

⁵ As mentioned above if the enforcement body is not to be UK wide, countries mechanisms & procedures must be considered as not all countries have the same existing bodies or ability to create new ones. For example, Northern Ireland still does not have an independent environmental protection agency and therefore this must be seen as a priority. Any enforcement procedures being created for England should consider also covering Northern Ireland.

rights (and third parties as appropriate) as a result of the failure of an organisation to comply can seek a remedy, including compensation.

Review mechanism

The due diligence obligation will need a statutory required review to assess (i) how well the law is working and (ii) to provide a mechanism to progressively enhance the due diligence obligation to help achieve government goals to reduce the UK's global footprint in due time, ensuring that the law is fit for purpose in future.

A review must have clear objectives in assessing the effectiveness of the law, be carried out at regular intervals of a specified timeframe and use transparent reporting practices with, for example, Parliamentary/Assembly oversight. The review should include public consultation and seek advice from independent experts. Where shortcomings are identified, there should be a duty on the Secretary of State and the relevant Ministers in the Devolved Administrations to come forward with legislative or policy proposals to address these promptly.

We recognize that implementing a mandatory due diligence obligation is just one critical part of a wider suite of UK Government actions designed to build fairer and greener societies. In order to achieve the goals set out, it is vital that the law is backed up with aligned cross-government policies, including: trade policy that rewards sustainable production and forest protection, an uplift in Overseas Development Assistance that supports the scale-up of nature-based solutions towards meeting the shared environmental goals embedded in the Paris Agreement and the post-2020 CBD biodiversity framework and alignment with domestic policies to put nature on the road to recovery.

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

Please see page 2 of this submission.

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)]?

The TCFD and the proposed Taskforce on Nature-Related Financial Disclosures are welcome initiatives. If the TCFD were to be made mandatory, it would accelerate uptake of credible company reporting practices on climate-related risks and would help to standardize these reporting practices. However, these initiatives rely on business actors identifying impacts arising from planned activities. If we consider that many large businesses already have ambitious zero-deforestation company policies, they would not, through this mechanism, be able to identify deforestation risk with accuracy. A due diligence obligation would ideally require businesses to adopt a **forward-looking process** to assess possible future risks in an effective way, thus focussing on avoiding rather than on remedying harm.

From a reporting perspective, and in relation to the TCFD, it would be appropriate that the due diligence mechanism to use broader reporting than to focus on just carbon emissions. Other impacts of UK agricultural commodity trade, including those that relate to biodiversity, water, as soil degradation and erosion, water regulation, chemicals, should also be monitored and reported if these impacts are to be mitigated in the future under an enhanced scope of the proposal, in accordance with reducing the UK's global environmental footprint.

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

Please see the full submission above.