



Environment Bill - Joint NGO Briefing on Due Diligence and Deforestation (Schedule 16)

June 2021

We welcome the Government’s ambition to tackle the UK’s contribution to global deforestation, and we support the Government’s proposal to establish a legal framework to address the environmental footprint of the UK’s consumption of forest risk commodities. Halting the global loss of forests and other natural ecosystems is essential for tackling the climate and nature emergencies we all face, as well as for preserving the capacity of the natural world to sustain our economies and well-being, and for protecting the human rights of the estimated [1.3 billion people](#) who depend directly on forests for their livelihoods.

As the [Dasgupta Review](#) emphasises, we need nature to survive. Yet the demands we currently place on nature far exceed its capacity. The Review concludes that food production is the most significant driver of terrestrial biodiversity loss and that consumption and production patterns need to be fundamentally restructured and aligned with what nature can provide on a sustainable basis. We echo the Review’s urgent call for global leadership and ambition.

The Dasgupta Review’s urgent call for transformative change reflects the package of measures recommended by the (independent) [Global Resource Initiative Taskforce](#) (“GRI”) convened by the UK Government, which charts a new strategic direction to overcome the challenges of commodity-driven deforestation and land conversion. The GRI was unanimous that non-binding commitments and voluntary measures have made insufficient progress towards solving commodity-driven deforestation and land-conversion, and provided clear recommendations for a new approach. Key amongst these was the recommendation to urgently introduce a mandatory due diligence obligation on business and finance to ensure that: environmental and human rights risks and impacts in their supply chains, or linked to their lending and investments respectively, are analysed; action is taken to prevent or mitigate these risks and impacts; and information about these actions is reported to the public.

However, the current proposal, set out in Schedule 16 to the Environment Bill, needs improvement if it is to deliver on these recommendations and live up to the expectations of UK consumers and businesses. For the Government to deliver the ambitious leadership needed to tackle global deforestation, climate change, and biodiversity loss – at the G7, COP26, and other key events this year – Schedule 16 should be improved.

We therefore make the following recommendations to address the key shortcomings of Schedule 16 and to make it the world-leading legal framework we all need.

1. Address all deforestation, not just deforestation that is classified as ‘illegal’ under producer country laws

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 ecological, climate, human rights and sustainability impacts. In fact, while circumstances vary between producer countries and with spates of agricultural expansion, [half of global tropical deforestation is considered ‘legal’](#) under local laws. Given that 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](#), and that [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, addressing only ‘illegal’ deforestation linked to the consumption of forest risk commodities would ignore a huge part of the UK’s global deforestation footprint.

What constitutes ‘illegal’ deforestation also varies greatly between countries and often between jurisdictions *within* countries. While some countries may have strong laws that prevent deforestation, others may have laws that effectively enable deforestation, creating an uneven playing field and inconsistent standards for UK businesses depending on where they source from. Laws relating to land use, forests, and commodity production are also often numerous, complex, uncertain, inconsistent, or poorly implemented, all of which means that deforestation may be poorly regulated and determining ‘legality’ can be very difficult, time consuming and expensive, and in some cases, potentially impossible to verify.

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](#), with several alarming legal reforms currently proposed, which put at risk millions of hectares of forest 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.

Furthermore, limiting access to the UK market based on the legal treatment of deforestation in producer countries also risks creating a very real economic incentive to legalise deforestation, particularly as some producer countries may prioritise short-term economic growth over protecting forests, as a response to the COVID pandemic. A key aim of the UK’s due diligence legislation should be to instead support producer countries to improve and enforce laws that prevent *all* forms of deforestation in a manner consistent with [accepted international norms](#).

Businesses also support an approach to tackle all deforestation rather than one focussed on legality. 81% of the biggest UK companies in forest risk supply chains have stated that they [aim to remove all deforestation from their supply chains](#), with 22 major UK businesses recently [calling on the UK Government](#) to develop a legal framework for halting all forms of deforestation and land conversion. UK citizens also support a strong zero-deforestation law. In response to the Government’s public consultation on ‘due diligence on forest risk commodities’, [over 99% of respondents supported the introduction of legislation to reduce all deforestation](#). Dozens of organisations and scientists in [forest-rich countries](#) made the same recommendation. The [GRI also recommended](#) that Government action to address the sustainability of UK commodity supply chains should focus on *all* deforestation and land-use conversion.

A zero-deforestation standard, based on [accepted international norms](#) and [definitions](#), would provide clarity, consistency and certainty, could be easily implemented by UK businesses using existing tools and technologies, and be more easily and cost-effectively enforced by the UK Government, while allowing the UK to work with producer countries where necessary to ensure that local laws effectively prevent commodity-driven deforestation.

2. Include protections for human rights, including customary tenure rights and the right to free, prior and informed consent

Just as deforestation has significant ecological, biodiversity, and climate impacts, it also has significant human rights impacts, particularly for Indigenous Peoples and other forest-dependent communities. Many of these peoples and communities have been living sustainably in forest areas for decades, if not centuries, and have well-developed customary land ownership and management systems that are recognised and protected under international law. The conversion of forests and other ecosystems to agricultural production often [goes hand in hand with conflicts and human rights impacts](#), with people living in forests and savannahs manipulated or coerced into leaving their lands, often violently, only for trees to be cleared and the land converted to industrial farming.

While the current proposal rightly requires UK companies to ensure that local laws related to land use and land ownership are respected, this approach overlooks the fact that about [80% of Indigenous and community lands are held without legally recognised tenure rights](#). Furthermore, [deforestation rates are significantly lower in Indigenous and tribal territories](#) where governments have formally recognised these customary tenure rights. Ensuring respect for the customary tenure rights of communities in forest areas is therefore [an efficient, just, and cost-effective way to reduce carbon emissions](#).

Given the prevalence of human rights impacts and risks associated with forest risk commodities, the new legal framework should require UK businesses to ensure that their forest risk commodities are not linked to human rights impacts, that all customary and other legitimate tenure rights are respected, and that the free, prior and informed consent (“FPIC”) of Indigenous Peoples and other communities with collective tenure rights has been obtained regarding any production of forest risk commodities on their land. In this regard, we strongly support the [GRI’s recommendation](#) to urgently introduce mandatory environmental and human rights due diligence obligations for businesses and finance institutions with exposure to forest risk commodities in their supply chains or finance activities. This should include specific requirements to prevent, mitigate, or cease impacts on customary and other legitimate tenure rights and rights to FPIC. This is consistent with international instruments recognising that businesses with global supply chains must respect human rights, including the [UN Guiding Principles on Business and Human Rights](#) and the [OECD Guidelines for Multinational Enterprises](#) – of which the UK is a signatory – and a wealth of industry [guidance on how to ‘operationalise’ human rights and FPIC requirements](#).

3. Strengthen the review procedure and include a mechanism to progressively improve the framework, its implementation and enforcement

The current proposal 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 that many important elements of the framework will be set by secondary legislation (including the list of the forest risk commodities to which it applies, identification of the UK businesses to which it applies, thresholds for exemptions, the due diligence requirements for covered businesses, and essentially the entire enforcement regime), it is important that the review procedure meets basic criteria as to quality, transparency and independence and, where deficiencies are identified, that there are clear procedures which result in improvements to the framework (and its regulations). Likewise, if UK businesses will need to ensure their products have been produced in compliance with ‘relevant local laws’ (combined with a deforestation-free and human rights requirements as discussed above), it is important that the review mechanism requires adjustments to the Framework that address any deregulation or winding-back of protections for forests in producer countries.

To focus and guide the progressive improvement of the forest risk commodities framework, respond to public support for further action, and to signal the UK's commitment to tackling the global climate and biodiversity crises, we recommend, [as did the GRI](#), to introduce a legally binding target to achieve deforestation and conversion-free, sustainable supply chains of agricultural and forestry commodities.

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

4. Establish equivalent obligations for financial institutions

The risk of contributing to deforestation and human rights impacts applies to both businesses trading in forest risk commodities, but also for UK financial institutions exposed to forest risk commodity sectors through their financial services. Investigations show that [UK-based financial institutions were the single biggest source of international finance for six of the most harmful agribusiness companies](#) involved in deforestation in Brazil, the Congo Basin and Papua New Guinea, providing a staggering £5 billion between 2013 and 2019. These UK banks included HSBC, Barclays and Standard Chartered. Between 2017 and 2019, UK banks and finance institutions, including HSBC and Barclays, failed to conduct meaningful due diligence while they provided or facilitated [more than £500 million to the Brazilian operations of three of the world's largest beef companies, all of which have been linked to deforestation and human rights impacts](#).

Financial institutions are most often exposed to commodity-driven deforestation through their [provision of generalised financial services](#) (e.g. corporate loans, shareholdings, revolving credit facilities and bonds) at company or corporate group level that are not tied to specific projects or investments. This kind of financial support often fails to consider, and therefore fails to address, the environmental and social impacts of the activities undertaken by the companies or corporate groups that receive it. This is partly because [reporting mechanisms typically fail to identify the links between financial institutions and companies implicated in environmental or social impacts](#), and therefore provide little accountability for financial institutions for their role in facilitating these impacts.

As [recommended by the GRI](#), the forest risk commodities framework should address the role of UK finance in global deforestation. This would specifically require that finance institutions may only provide financial services to companies or corporate groups whose operations include the production, trade, transport or use of forest risk commodities if those operations comply with UK legislation in this regard, and are not linked to deforestation or adverse human rights impacts. This would place comparable due diligence requirements on finance institutions, helping to build the sustainability, credibility and competitiveness of the UK finance sector.

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On behalf of UK NGO Forest Coalition, Corporate Justice Coalition, Fairtrade Foundation, Environmental Justice Foundation, Friends of the Earth England, Wales and Northern Ireland, and Greenpeace