



# Forests

## **Making the Law Work** The Environmental Investigation Agency's response to the UK Government's legislation on forest-risk commodities

April 2024

©EIA/KT

## Summary

The forests of the world are crucial for fighting climate change, are home to huge amounts of biodiversity and provide us with water, food, oxygen and shelter.

With more than one billion people reliant on forests,<sup>1</sup> it is crucial that, as we look towards solutions to protect both forests and people, good forest governance is seen as key to their survival.

There have been various initiatives from governments to combat deforestation and forest degradation.<sup>2</sup> The ever-increasing conversion of forests to agricultural land contributes to climate chaos and insecurity for forest-dependent peoples.

Global demand for timber is also exponentially increasing and is set to quadruple by 2050,<sup>3</sup> contributing to the selective logging and clear-cutting of old-growth forests.

In January 2021, the UK Timber Regulation (UKTR) was implemented to replace the EU Timber Regulation following the UK's withdrawal from the EU to help prevent the trade of illegal timber into the UK. However, it has been recognised that this is not enough and in 2020 the UK Government committed to introduce new due diligence legislation, which goes further than timber and focuses on other forest-risk commodities.

The Government subsequently passed the Environment Act in 2021, under which businesses will be required to establish and implement a due diligence system to ensure the forest-risk commodities they use are legal.

In December 2023, the Government [announced](#) its intention for this due diligence legislation to cover non-dairy cattle products (beef and leather), cocoa, palm and soy and for the regulations to apply to organisations with a global annual turnover of more than £50 million and whose use of these commodities exceeds 500 tonnes annually. To date, we are still waiting for the UK Government to lay the secondary regulations which would bring the due diligence legislation under the Environment Act into effect.

On 4 January 2024, the Environmental Audit Committee (EAC) published the second report of its inquiry into Sustainable timber and deforestation, entitled [The UK's contribution to tackling global deforestation](#). It included recommendations for the Government on the due diligence legislation, associated guidance and other issues.

The report highlighted that, while the UK is the 15th largest contributor to tropical deforestation in global terms, the intensity of UK consumption (measured in footprint per tonne of product consumed) is higher than that of China.<sup>4</sup> This demonstrates the crucial role of the UK and therefore the urgency of the need to bring the due diligence legislation into effect.

Given the impact our consumption has on producer countries, and with consumers demanding to know more about where products come from, the UK Government must act and act now.

This document summarises the key points of the [UK Government's response](#) to the EAC report, with EIA's recommendations.

## Summary of recommendations

- 1. Publish a date** for laying secondary regulations as a matter of urgency
- 2. Ensure the scope of laws the legislation covers is broad and clear**, including laws related to indigenous peoples and local communities, and work in partnership with countries, investing in multi-stakeholder processes
- 3. Commit to the explicit evaluation of the legislation's impact on indigenous peoples and local communities**
- 4. Include all major forest-risk commodities** with a UK deforestation footprint in the legislation from the outset
- 5. Apply the legislation, at the minimum, to all large companies (annual turnover of £36 million or more) or to companies which use more than X tonnes of a regulated commodity, defined per commodity**
- 6. Make clear how the legislation applies to the financial sector** and commit to regulating the financial sector in relation to activities linked to deforestation
- 7. Make customs data openly available** to promote enforcement and transparency
- 8. Update the Government Buying Standards to ensure goods publicly procured are legal and sustainable and do not rely on certification.**



©EIA/KT

# 1. Urgency of the legislation

## UK Government:

"We are fully aware of the urgency of the need to legislate to tackle deforestation in our supply chains" (page 7)

**EIA:** There is still no commitment to a date for publication of the secondary regulations that would bring the due diligence requirements under the UK Environment Act into force – only that the Government is "committed to laying secondary legislation as soon as parliamentary time allows". Given the Environment Act was enacted back in November 2021, it is critical that the secondary regulations are laid.

**Recommendation:** The Government must publish a date for when it will lay its secondary regulations as a matter of urgency.

# 2. Scope of laws and partnership with countries

## UK Government:

"We believe that the only way to achieve zero global deforestation in supply chains is to work in partnership with producer countries – and that working in partnership requires us to uphold and respect national laws" (page 8)

"As part of our partnership approach, we continue to engage in technical discussions with producer country representatives from government, industry and local communities, both domestically and through international visits" (page 2)

"... our due diligence legislation should apply to indigenous peoples' rights to land where this protection applies under national laws" (page 10)

**EIA:** We support the Government's approach to legality as it respects the sovereignty and laws of producer countries. Globally, however, not all laws are equitable, effectively implemented or properly enforced and some are in need of reform.

In response to the UK's proposed legislation, Indonesian civil society organisations have noted "there is a concern about the UK unconditionally accepting national standards from producer countries. For Indonesia, national policy and standards are required that include sustainability, transparency, justice, comply with legality requirements and respect human rights, as well as recognising and protecting the rights of indigenous peoples. Therefore, this policy could also serve as a scheme to improve the governance of forest and land-based commodities in Indonesia that is binding in nature".<sup>5</sup>

In this respect, we welcome the Government's approach to working in partnership with producer countries as it ensures both producer and demand side measures are working toward the same goal. However, the Government has not clearly set out how it will achieve this.

**Recommendation:** It is crucial that the scope of laws the legislation covers is made clear and is as wide as possible – a suggested list of the types of laws is in Annex 1.<sup>6</sup> The guidance must provide a working definition of the category of laws that constitute a relevant local law and set out examples. It must also clearly set out the need for businesses to follow laws related to indigenous peoples and local communities' (IPLC's) rights to land, territories and resources.

The Government must ensure that, in partnership with producer countries, investment is made to reform. There needs to be a clear multi-stakeholder process to support and strengthen good forest governance in countries. The Government must clearly set out its partnership approach beyond just providing funding packages and include a wide range of civil society representation, including IPLCs, in all stages of the process, from development to implementation.

# 3. Impact on indigenous peoples and local communities (IPLCs)

## UK Government:

"... we are aware of the crucial role of indigenous peoples in the preservation of forests and appreciate the relevance of this issue to our core policy objectives. We are exploring how it may be possible to address this within the independent evaluation of the scheme." (page 11)

"As the objective of our due diligence legislation is to reduce deforestation linked to UK commodity supply chains, statutory reviews of Schedule 17 will focus on evaluating the scheme's effectiveness in meeting this objective." (page 11)

**EIA:** We are pleased the Government is exploring the inclusion of indigenous peoples within the evaluation of the legislation's impact. However, the purpose of the legislation is not solely to reduce deforestation – its focus is also on local laws. It is explicitly mentioned in Schedule 17 that one of the review objectives is to consider any changes to relevant local laws and that should encompass laws which relate to IPLCs and their rights.<sup>7</sup>

**Recommendation:** The Government should commit to the explicit evaluation of the legislation's impact on IPLC rights. This should include whether there have been any changes to relevant local laws relating to IPLCs, and if such laws are in line with international human rights commitments, such as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), including the right to Free, Prior and Informed Consent (FPIC) and freedom from violence and intimidation.

## 4. Commodity scope

### UK Government:

"We decided to include four commodities initially in secondary legislation based on the consultation feedback, an assessment of each commodity's role in global deforestation, the UK's contribution to that deforestation, and the UK's ability to effectively regulate that commodity." (page 9)

"... the revised estimated proportion of UK linked deforestation (both tropical and non-tropical) caused by its consumption of the four commodities was 52 per cent in 2021" (page 10)

**EIA:** The Government has already substantially delayed the legislation. It is unclear what evidence there is to suggest that prioritising just four commodities (cattle, cocoa, palm oil and soy) with the largest environmental impact would accelerate the regulations coming into force.

The four commodities are estimated by the Government to only account for 52 per cent of the UK's deforestation [footprint](#) – a reduction from the previously estimated 64 per cent.<sup>8</sup> This suggests the legislation is even less ambitious than previously thought, further demonstrating the need for the full range of forest-risk commodities to be included from the start.

**Recommendation:** All major forest-risk commodities associated with a UK deforestation footprint (soy, palm oil, cocoa, maize, cattle (beef and leather), rubber and coffee) should be in scope of the legislation from the start. Future reviews should periodically assess the commodities covered by the legislation.

## 5. Thresholds

### UK Government:

"Organisations in scope of regulation whose use of a regulated commodity or derived product does not exceed the annual threshold of 500 tonnes will be eligible to submit a notice of an exemption from the due diligence requirements. Further guidance on submitting an exemption will be published alongside the legislation" (page 7)

**EIA:** The 500 tonnes threshold will likely have a significantly different impact depending on the commodity. Additionally, there has not been clarity on why the Government has proposed that the legislation applies to companies with a global turnover of greater than £50 million – given the UK definition of a large company is £36 million – and whether this relates to the parent company or otherwise.

**Recommendation:** The Government should provide clarity and the data behind its proposed thresholds. The legislation should, at a minimum, apply to all large businesses (global turnover of £36 million or more) or where a business uses over X tonnes of a regulated commodity per year, defined per commodity. Proposed volumetric and financial thresholds must be regularly evaluated to ensure effective legislation.

## 6. Financial sector

### UK Government:

"Guidance on the application of the Schedule 17 regime to businesses in the UK financial sector will be published when secondary legislation is laid in Parliament" (page 11)

"HM Treasury will conduct a review to assess the extent to which regulation of the UK financial system is adequate for the purpose of eliminating the financing of illegal deforestation, and to consider what, if any, changes to the regulatory framework may be appropriate" (page 11)

**EIA:** It is unclear how Schedule 17 of the Environment Act will apply to the financial sector, so clarity is needed. The significant role of the UK financial sector in deforestation around the world and the complexity of this issue suggests the financial industry should be regulated more widely, not just referenced within the guidance under Schedule 17.

It is positive that the Financial Services and Markets Act 2023 commits the Treasury to reviewing whether the financial regulatory framework is adequate for the purpose of eliminating the financing of illegal deforestation and to consider what changes to the regulatory framework may be appropriate. However, the time taken for this nine-month review, which will only commence once the secondary regulations to Schedule 17 of the Environment Act are enacted, will allow for the financing of deforestation to continue unabated during this time and the review does not firmly commit the Government to regulating the financial sector.

**Recommendation:** The guidance must clearly set out how Schedule 17 of the Environment Act will be applied to finance and how it will work in practice. Given the timeframe for the Treasury's review of the financial system and the amount of deforestation that will take place in that time, the Government should in the meantime commit to regulating the financial sector in relation to activities linked to deforestation.

## 7. Data sharing and transparency

### UK Government:

"... the UK's Forest-Risk Commodities scheme will necessitate the sharing of data between organisations domestically and internationally regarding the sourcing of commodities" (page 4)

"Organisations in scope will need to submit an annual report regarding their due diligence systems, which will be published to ensure transparency" (page 4)

**EIA:** We welcome that companies will need to submit an annual report on their due diligence systems. However, this is understood to likely be high-level information on the type of approach they are using. The Government did not respond to the EAC's recommendation to promote international data disclosure, including disclosing UK customs and industrial data.

**Recommendation:** Customs data must be made openly available for civil society to support enforcement, lending credibility to the law and promoting transparency.

## 8. Public procurement

### UK Government:

"The UK Government is not currently considering widening the scope of the Government Buying Standards (GBS)" (page 5)

**EIA:** [We provided evidence to the EAC's inquiry](#) on the over-reliance of certification schemes by the GBS to ensure legality and sustainability. Widespread evidence confirms such schemes are not robust or reliable.

**Recommendation:** The Government Buying Standards must ensure production is legal and sustainable and not rely on certification. The Standards need to be urgently revised. Some, such as those on procuring food and catering services, have not been updated for 10 years. We urge that they are also mandatory for all public sector bodies.

# Annex 1

## **Examples of the types of laws, statutes, regulations and legal structures that are relevant for due diligence reporting to the UK Government's Forest-Risk Commodities legislation**

- The rights of long-term occupants and land users
- Usufruct rights (the legal right of using and enjoying the fruits or profits of something belonging to another)
- Protections and rights that relate to indigenous peoples and others with customary land rights
- Prevention of illegitimate land claims, titles or other forms of land transactions being issued – for example, by failing to recognise the pre-existing rights of others under law or through fraudulent means
- Prevention of fraudulent land transactions
- Obligations to identify existing land users or rights holders and to undertake consultations or negotiations with affected communities and/or the general public
- The integration of international legal obligations into national law, such as those pertaining to the rights to use or make decisions over land and its use, for example ILO 169 and international human rights frameworks
- Prevention of specified areas from being used for the commercial production of commodities
- Social protections surrounding access to land and natural resources, evictions and resettlement, privatisation, expropriation or eminent domain or other adverse impacts on land users
- Outlining specific conditions, obligations and procedures that must be met by companies to legally obtain or maintain lease rights or permits to use land for specified activities
- Obligations that relate to the meaningful participation of potentially affected peoples in decision-making, including but not limited to the right to Free, Prior and Informed Consent (FPIC)
- Restrictions on the total area of land area that a company, entity or individual can control or access (which equally applies to land ownership)
- Obligations and requirements that must be met in environmental and social impact assessments
- Environmental protection, restrictions or conditions on the use of land
- Procedural and substantive requirements, including before concessions are granted
- Corruption, such as relating to the correct permitting process, and that the acquisition of permits is not obtained by bribery or corruption
- Requirements intended to prevent bribery, corruption, fraud or other malpractice in relation to upholding the legal obligations and/or provision delivery of government services related to relevant land use
- Requirements specifically designed to prevent bribery, corruption or fraudulent practices in that relate to tax or duty obligations related to ownership or land use

# Background

- The [Environmental Audit Committee](#) is a House of Commons Select Committee comprised of cross-party MPs. Its remit is “to consider the extent to which the policies and programmes of Government departments and non-departmental public bodies contribute to environmental protection and sustainable development, and to audit their performance against sustainable development and environmental protection targets”.
- Schedule 17 of the Environment Act requires the Secretary of State to evaluate the effectiveness of the due diligence system in the third year following its full entry into force.
- Government Buying Standards (GBS) are public policy for buying goods and services.

# References

1. Cell Press (18 September 2020) 'Mapping the 1.6 billion people who live near forests', ScienceDaily. ScienceDaily, [www.sciencedaily.com/releases/2020/09/200918112140.htm](http://www.sciencedaily.com/releases/2020/09/200918112140.htm)
2. Deforestation occurs when forests are converted to non-forest uses, such as agriculture and road construction. Forest degradation occurs when forest ecosystems lose their capacity to provide important goods and services to people and nature.
3. Environmental Audit Committee (25 July 2022) 'What impact will increased timber use in the future have on global deforestation?', <https://committees.parliament.uk/work/6880/sustainable-timber-and-deforestation/news/172336/what-impact-will-increased-timber-use-in-the-future-have-on-global-deforestation/>
4. House of Commons Environmental Audit Committee (4 January 2024) 'The UK's contribution to tackling global deforestation', <https://committees.parliament.uk/publications/42709/documents/212302/default/>
5. Kaoem Telapak (7 October 2020) 'Indonesian CSOs Input for UK DDR Consultation', <https://kaoemtelapak.org/indonesian-csos-input-for-uk-ddr-consultation-2/>
6. The suggested list of local laws was compiled and previously shared with Defra in October 2021 and was also included in EIA's Defra Consultation submission in March 2022 on page 19 - see blog below for relevant links to the submission: <https://eia-international.org/news/the-uk-needs-to-seriously-step-up-its-game-to-reduce-deforestation-caused-by-commodity-imports/>
7. The UK is a signatory to various UN Human Rights Treaties, including the Universal Declaration of Human Rights (UDHR) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and therefore has an obligation to uphold human rights.
8. The UK's contribution to tackling global deforestation: Government Response to the Committee's Fourth Report (20 March 2024), page 10 <https://committees.parliament.uk/publications/44020/documents/218124/default/>

---

## ABOUT EIA

We investigate and campaign against environmental crime and abuse.

Our undercover investigations expose transnational wildlife crime, with a focus on elephants and tigers, and forest crimes such as illegal logging and deforestation for cash crops like palm oil. We work to safeguard global marine ecosystems by addressing the threats posed by plastic pollution, bycatch and commercial exploitation of whales, dolphins and porpoises. Finally, we reduce the impact of climate change by campaigning to eliminate powerful refrigerant greenhouse gases, exposing related illicit trade and improving energy efficiency in the cooling sector.