

# The UK Proposes Legislation Targeting Use of Products Resulting from Illegal Deforestation and Mandating Supply Chain Due Diligence

16 September 2020

On 25 August 2020, the UK government announced plans to introduce “*world-leading*” legislation targeting the use of “*forest-risk commodities*” produced from land that was deforested illegally (e.g., beef and leather, cocoa, palm oil, pulp and paper, timber, rubber and soya).

If adopted, the new law would make it illegal for “*larger*” businesses to use forest-risk commodities that have not been produced in accordance with local laws protecting forests and other natural ecosystems. It would also mandate supply chain due diligence and publication of the results, requiring businesses to identify where any forest-risk commodities in their supply chains were produced and that the production of those commodities complied with relevant local laws.

The UK government launched a public consultation on 25 August 2020 seeking views on whether it should adopt the proposed new law and the impacts that it might have on business and other interests. Stakeholders have until 5 October 2020 to respond.

It remains to be seen whether the government will adopt a recommendation that the financial sector should also be subject to a mandatory due diligence requirement “*in order to avoid their lending and investments funding deforestation*”.

**Background.** In 2019, the UK government established an independent taskforce—the Global Resource Initiative (“GRI”)—as part of its 25-Year Environment Plan. The GRI was tasked with considering actions that the UK could take to make international supply chains greener. In March 2020, the GRI submitted its final recommendations to the government, which included the introduction of “*a mandatory due diligence obligation on companies that place commodities and derived products that contribute to deforestation on the UK market and to take action to ensure similar principles are applied to the finance industry*”. The proposed legislation is a response to this recommendation.

**The Government’s Proposal.** The proposed legislation would:

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- Make it illegal for targeted businesses to use forest-risk commodities that have not been produced in accordance with relevant local laws in production or trade within the UK;
  - Require targeted businesses to conduct due diligence to ensure that illegally produced forest-risk commodities do not enter their supply chain and to report on this exercise publicly;
  - Enable the government to levy fines and other civil sanctions against businesses that (i) continue to use forest-risk commodities that have not been produced legally and/or (ii) do not have a robust system of due diligence in place; and
  - Require that the government regularly review the law's effectiveness.

**“Targeted Businesses”.** The proposed legislation will apply to “*targeted businesses*”. While the proposal does not define this term, the government has indicated that the law will target “*a small number of larger businesses*” using forest-risk commodities in production or trade in the UK, applying employee and turnover criteria. The stated rationale for this approach is that larger businesses “*have the influence to send a positive signal to producers*”.

**Reactions to the Government's Proposal.** While certain environmental NGOs have described the proposal as a “welcome first step”, they have also criticized a perceived lacuna in the legislation. For example, Global Canopy's Policy Director, Helen Bellfield, notes that “this proposal would not do enough to stop tropical deforestation in the Amazon and elsewhere. No company should be importing products that are the result of illegal deforestation—but they also should not be importing goods from areas where weak legislation means that forests are being legally cleared.”

**Next Steps.** The public consultation will run until 5 October 2020. The government has made clear that the consultation is designed to seek views “from a wide range of stakeholders in the UK and internationally on the broad principles of our proposal in order to make sure that any future primary legislation is designed in the right way.”

The consultation will be followed by a report summarising the feedback received and a full impact assessment. If the government moves forward with the proposal, it will hold further consultations regarding potential secondary legislation.

The government has also stated that it is “committed to addressing all major challenges identified in the GRI report” and that it will provide a formal response to the report later this year. It remains to be seen whether the government will adopt the GRI's recommendation that a mandatory due diligence requirement should also be imposed

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on the financial sector, “requiring them to exercise due diligence in order to avoid their lending and investments funding deforestation”.

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The UK’s proposed legislation comes in the context of a growing global trend of regulation and guidelines that have strengthened business integrity obligations. For example, the Modern Slavery Act in the United Kingdom and the Loi de Vigilance in France have led to new types of sanctions and new disclosure obligations related to corporate supply chains, and the upcoming ESG Disclosure Regulation and related legislative frameworks will set new standards for fund and portfolio managers (among others). In addition, corporations are increasingly expected to implement best practices to comply with guidelines such as the United Nations Guiding Principles on Business and Human Rights, the United Nations Global Compact, the Voluntary Principles on Security and Human Rights and the OECD Guidelines for Multinational Enterprises.

Debevoise’s cross-practice Business Integrity Group is closely monitoring these developments. Tools like the Debevoise Business Integrity Screen can help companies implement a systematic approach to business integrity risks to manage the rapidly evolving reputational, financial, political and legal consequences of such risks.

Please do not hesitate to contact us with any questions on how this development may impact your business.

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