

ENVIRONMENT BILL

PARLIAMMENTARY BRIEFING

Schedule 16: use of forest risk commodities in commercial activity

July 2021

SUMMARY

- > Schedule 16 is an important provision in the Environment Bill which could establish world leading legislation to tackle the UK's complicity in global deforestation.
- > While this new provision is a step in the right direction, it should be strengthened to:
 - > address the role UK financial institutions in financing deforestation
 - > provide stronger protection for the rights of forest communities and indigenous peoples
 - > establish a single definition of deforestation that draws on international standards and applies to all UK sourcing.
- > We encourage Peers to support amendments on:
 - > **finance** - 265A (p6) tabled by Baroness Parminter
 - > **indigenous people** - 264ZA (p6) tabled by Baroness Jones Whitchurch
 - > **zero deforestation** - 264A* (p81) tabled by Baroness Meacher

INTRODUCTION

Schedule 16 of the Environment Bill includes a prohibition on the use of certain commodities associated with illegal deforestation and requirements for large companies to undertake due diligence and reporting. This is a welcome step in the right direction. There was strong public support in response to a government consultation on these measures, with [99% of respondents](#) agreeing that this new legislation is needed.

This legislation is an opportunity for the UK to establish a world-leading legal framework for UK businesses in the lead up to the crucial COP-26 climate summit later this year. While the measures in Schedule 16 are welcome, **they should be strengthened to ensure that the due diligence requirements cover all deforestation, cover the finance industry and by providing stronger protection for local communities and indigenous people.**

DEFORESTATION

Deforestation is a major factor in the global climate and biodiversity crises, in particular tropical forests which are essential to carbon storage, regulating the global climate and are home to a large proportion of terrestrial biodiversity. The latest data released by [Global Forest Watch](#) found that primary forest loss was 12% higher in 2020 than the year before, including the loss of some 4.2 million hectares, an area the size of the Netherlands, of primary humid tropical forests.

Each year the land used to produce UK imports of commodities associated with deforestation – like beef, leather, soy, palm oil and timber – has been shown by WWF and RSPB to take up an area [almost the size of the UK](#). In addition to the environmental cost of unregulated forest-risk supply chains, associated land-grabbing has driven forced evictions and displacement of local communities and indigenous peoples and contributed to human rights abuses, including the killings of land and [environment defenders](#).

HOW UK FINANCIAL INSTITUTIONS ARE COMPLICIT IN DEFORESTATION

As we reported in [Money to Burn](#), UK-based financial institutions were the single biggest source of international finance for six of the most harmful agribusiness companies involved in deforestation in the climate-critical forests of 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.

More recently, in our report [Beef, Banks and the Brazilian Amazon](#) we found that major UK banks and finance institutions have either provided or facilitated more than £500m to the Brazilian arms of three of the world's largest beef companies which were all linked to deforestation in the Brazilian Amazon. Hundreds of millions more have gone into their parent or subsidiary companies. Between 2017 and 2019 household names such as **Barclays** and **HSBC** all failed to do meaningful due diligence on their exposure to this deforestation, and continue backing the companies today despite many warnings of their failures.

Schedule 16 does not address the financing behind deforestation. In March 2020, the government-appointed [Global Resource Initiative](#) Taskforce recommended that the UK should require companies to undertake checks on deforestation risk in their supply chains and recommended that similar measures should apply to finance. The government chose to only cover supply chains, responding that UK finance institutions can use the new information gained from companies undertaking due diligence reports to inform their decisions. However, experience has shown that financial institutions are failing to act on [extensive evidence](#) of deforestation risk associated with their financial activities and will not do so unless required to by law. This is particularly important, as broad-based measures on finance such as the Task Force on Climate-Related Financial Disclosures or similar efforts on nature and biodiversity (like the Task Force on Nature Related Financial Disclosures) [are ill-suited](#) to the specific issues related to deforestation and are unlikely to curb the financing of deforestation.

The legislation should therefore specify that UK finance institutions must not provide financial services to commercial enterprises engaged in the production, trade, transport or use of forest risk commodities. This would place comparable due diligence requirements on finance institutions and mean banks are following the same rules as their clients. This would also help to build the credibility of UK financier credentials on deforestation across their business. When banks and investors make headlines for their links to deforestation in their mainstream activities, this undermines the City of London’s efforts to position itself as the green finance capital of the world.

We encourage Peers to support amendment 265A [finance](#) (p6) in the name of Baroness Parminter.

RESPECTING THE RIGHTS OF LOCAL COMMUNITIES AND INDIGENOUS PEOPLE

By failing to specify the need to ensure consent by forest communities and indigenous people, schedule 16 risks undermining their rights. Whilst the provision rightly references the need for companies to ensure that local laws are respected, including those related to land ownership and land use, this **overlooks the 80% of indigenous and community lands that do not yet have secure [legal rights](#).**

The bill should therefore require companies to ensure that the free, prior and informed consent (often referred to as FPIC) has been obtained from affected indigenous peoples and local communities. Free, prior and informed consent is defined under international law, and related commitments are included in a diverse array of industry standards, OECD guidance and company commitments - signalling that companies should already be incorporating it into their operations.¹ In practice, companies should work with communities to document evidence of a process for obtaining the free, prior and informed consent of indigenous people and local communities to any activities occurring on land and local area involved in the production of the commodities.

Indigenous peoples are some of the most at-risk communities across the globe, and at a disproportionate risk of reprisals. Last year, 40% of murdered [environmental defenders](#) belonged to indigenous communities. Between 2015 and 2019 over a third of all fatal

attacks have targeted indigenous people – even though indigenous communities make up only 5% of the world’s population. Ensuring strong, productive relationships with local people disincentivises attacks and threats which are frequently used to try to silence those on the frontlines of defending forests and who raise the alarm on forest-related abuses and criminality.

We encourage Peers to support the amendment on [indigenous people](#) 264ZA (p6) in the name of Baroness Jones of Whitchurch.

ADDRESSING ALL DEFORESTATION: CLOSING THE LEGAL LOOPHOLES

Schedule 16 introduces an important requirement that regulated businesses must not use certain forest risk commodities in their UK commercial activities unless relevant local laws were complied with in relation to that commodity. This is an important first step but does not go far enough **since 30% of tropical forest destruction is defined as ‘legal’ under local country laws**. This creates a concerning loophole that risks limiting the effectiveness of the legislation and could even incentivise governments in countries like Brazil to roll back forest protections in order to access UK markets. As deforestation is more prevalent where local laws are not enforced or upheld, this also poses challenges on how the UK will interpret what is legal.

To end UK complicity in deforestation, the law should ensure that no UK business is able to financially reward, incentivise or profit from forest destruction - irrespective of what local rules allow. The government should clearly define the harms the law is intended to stop UK support for. This should be done by adopting a **deforestation-free standard** that draws on international standards such as the [Accountability Framework Initiative](#) and applies to all UK sourcing. [Dozens of organisations](#) from Brazil, Indonesia and Cameroon working on the frontlines of deforestation called on the government to take this approach, as did [over 20](#) of the UK’s largest agri-food supply chain companies. This single standard approach would also be easier for businesses and communities to understand and uphold.

We encourage Peers to support the [zero deforestation](#) amendment 264A* (p81) tabled by Baroness Meacher.

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ⁱ FPIC is drawn from the right to self-determination articulated in Article 1 of the UN Convention on Economic, Social and Cultural Rights. Other human rights documents include the ILO Convention 169, the UN Declaration on the Rights of Indigenous Peoples and findings of the Inter-American Court of Human Rights. Obligations to obtain the FPIC of indigenous peoples and local communities is included in a wide-range of industry standards and individual company policies in deforestation-risk sectors.