

**GLOBAL WITNESS RESPONSE:
DEFRA CONSULTATION ON IMPLEMENTING DUE DILIGENCE ON FOREST-
RISK COMMODITIES.**

10 March 2022

Q. 21 - Should we lay secondary legislation at the earliest opportunity?

Yes.

Q. 22. What should we take into account when considering how long businesses have to prepare for regulation before it comes into effect?

The UN Intergovernmental Panel on Climate Change has stressed that containing climate emergency to 1.5C cannot be achieved without halting deforestation and land change. Deforestation has driven the Amazon rainforest to shift from a carbon sink to a net carbon emitter. The UK, as well as the G7 and global leaders at COP26, have recognised the need to act with urgency to end deforestation. The UK Treasury's Dasgupta Review has also identified the threat of biodiversity loss to our global and national economies and the importance of creating resilient supply chains that preserve biodiversity. The government's impact assessment for this legislation also includes compelling statistics on the costs of deforestation to local economies. The Global Resource Initiative report outlines the need for urgent action by consumer governments, given the failure of voluntary approaches to achieve the decade-long targets to end deforestation in supply chains by 2020.

In 2021, the UK committed to the Glasgow Leaders Declaration on Forest and Land Use which pledges to 'halt and reverse' forest loss and land degradation by 2030. <https://ukcop26.org/glasgow-leaders-declaration-on-forests-and-land-use/> The UK has also pledged action on supply chains as a member of the G7. The government has also announced its intention to have a 'world-leading' law. According to the latest figures analysed by JNCC (2017), if the UK continues at the same rate of consumption of the 10 top agricultural commodities between 2023 and 2030 it will contribute to 217,000 hectares of deforestation risk. It is estimated that **162,584 hectares** of deforestation risk would arise alone from the commodities discussed in the consultation.

However, a rough scenario analysis of Option 1, 2 or 3 shows that these options do not deliver on this pledge. Our Options Analysis – based on optimistic assumptions such as perfect compliance – suggests that measuring UK consumption of the agricultural commodities discussed in the consultation alone, each option would see the UK contribute around, or significantly above, 100,000 hectares of deforestation risk between 2023 and 2030 (see analysis in the Options Analysis document attached at Q.25).

A copy of the Options Analysis can also be found [here](https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf):
https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf

Additionally, the restrictions of commodities covered and timeline delays in the UK consultation proposal differ significantly from other proposed legislation on forest-risk commodities in the EU and US. This falls short of the UK's 'world-leading' ambition and the necessary action to realise its commitment to play its role in halting and reversing forest loss and land use change by 2030, as well as creating market conditions that create a level playing field for businesses seeking to be deforestation-free.

The FOREST Act (S.2950) currently before US Congress lists regulated agricultural commodities as palm oil, soy, cocoa, cattle products (ie. beef and leather) and rubber.¹ It also includes wood pulp. The list will be reviewed each year, and products may be added or removed. The obligation not to source commodities produced in violation of local laws would take place within 12 months of the law being passed. <https://www.congress.gov/bill/117th-congress/senate-bill/2950/text?r=2&s=2>

The EU legislative proposal covers all deforestation and forest degradation (irrespective of national laws) in addition to full legal compliance and will cover cattle, oil palm, soy, cocoa, wood and coffee – and their derived products: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5916 The obligation begins 12 months after the legislation is passed (microenterprises are allowed 24 months). Additional commodities will be explored after 2 years.

See further information in the Addendum document in the PDF attached at Q.23, Sections A-C as well as Annex 1 and 2, which list a sample of available tools, services and methodologies to undertake due diligence.

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf): https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

We would also strongly encourage UK government to consult with local organisations, indigenous peoples and affected communities in forest-rich countries that are often the frontlines of working on land, forest and human rights issues in connection with forest-risk commodities. Please see the introduction of Addendum document which discusses barriers that these groups may face in submitting to the consultation.

Q 23. Can you provide any further evidence on commodities that drive deforestation?

The UK government's JNCC data identifies the top 10 agricultural commodities that are driving the UK's deforestation footprint in its domestic consumption. <https://commodityfootprints.earth/>

Additionally, Global Witness has produced many reports examining deforestation and land grabs linked to forest-risk commodities and their derived products, as well as outlining the threats and intimidation that indigenous peoples and local

¹ Although noting that timber products are outside the scope of Schedule 17 of the Environment Act.

communities face in seeking to defend their land and environment. These are often illustrative of underlying drivers as to why deforestation is occurring.

These reports often identify three key concerns: a) companies (and others) have failed to undertake adequate due diligence and vigilance when choosing to source or use commodities from high-risk regions; b) opaque and secretive practices prevent independent verification of supply chains – emphasizing the need for full traceability; and c) they have failed to act appropriately when alerted to concerns of human rights abuses, environmental destruction, corruption or illegality. This often includes continuing to source from problematic companies and a lack of redress for affected communities.

Recent Global Witness reports are listed below, each include links to UK businesses or supply chains:

- **2020:** Beef, Banks and the Brazilian Amazon (Brazil, beef):
https://www.globalwitness.org/documents/20061/Beef_Banks_and_the_Brazilian_Amazon_EN_-_December_2020_medium_res.pdf
- **2020:** Trading Risks (Indonesia, palm oil):
https://www.globalwitness.org/documents/20068/GW_Trading_Risks_Indonesia_EN_download.pdf
- **2021:** The True Cost of Palm Oil (Papua New Guinea, palm oil):
<https://www.globalwitness.org/en/campaigns/forests/true-price-palm-oil/#bewani-oil-palm-plantations-limited>
- **2021:** Deforestation Dividends (Global, various commodities)
<https://www.globalwitness.org/en/campaigns/forests/deforestation-dividends/>
- **2021:** Seeds of Conflict (Brazil, soy)
<https://www.globalwitness.org/en/campaigns/environmental-activists/global-commodity-traders-are-fuelling-land-conflicts-in-brazils-cerrado/>

In addition, Global Witness's annual reports (**2014-2021**) of the killings of land and environmental defenders consistently find agribusiness to be one of the deadliest industries for people peacefully seeking to defend their land and environment.
<https://www.globalwitness.org/en/campaigns/environmental-activists/land-and-environmental-defenders-annual-report-archive/>

The full dataset is available here:
https://static.globalwitness.org/interactives/2021/led-data-explorer/data/global_witness_led_20-10-21.csv

Global Witness notes that extractive industries and infrastructure can also be a leading driver of deforestation, land grabs and human rights abuses in some regions.

Section B of the uploaded Addendum document list examples of datasets for due diligence which often include, or align with, tracking deforestation across high risk commodities. Section A also includes links to examples of company grievance lists –

which can include direct grievances presented by communities or NGOs regarding links to deforestation in a firm's supply chain.

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf):
https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

24. Which of the following factors do you think should be considered to determine legislative sequencing? Please tick all that apply

- The commodity's impact on global deforestation
- The UK's role in this global deforestation
- Ability to deliver effective regulation
- Other - If you ticked other, please specify

Please state your reasons

As outlined in the Options Analysis document attached at Q25 – Global Witness estimates that the current options presented in the consultation paper could still see the UK contribute around or over 100,000 hectares in deforestation risk between 2023-2030 in its consumption of the highest risk commodities alone (which according to the government's Impact Assessment account for 65% of the UK's deforestation footprint). This fails to meet the UK's ambition to be 'world-leading' and its commitment to halt and reverse deforestation and land use change under the Glasgow Leaders Declaration on Forests and Land Use.

The proposed US FOREST Act (S. 2950) would cover palm oil, soy, cocoa, rubber wood pulp, and cattle (with beef and leather counted as derivatives of a single commodity under 'cattle') – so covering 6 of the commodities under the UK consultation survey questions – within 1 year.

The EU legislative proposal would cover six commodities and their derivatives (cattle, cocoa, coffee, oil palm, soy and wood – with beef and leather counted as a single commodity under 'cattle') – so, excluding wood products, 6 under the UK consultation survey commodity list within 1 year, and go beyond legality.

The UK government-backed Global Resource Initiative in discussing the need for a law to tackle the UK's contribution to global deforestation noted that "government should ensure sufficient resources are made available to ensure proper enforcement with an appropriately strong penalty regime". The options and scenarios should be revised to ensure an appropriate level of ambition in tackling the UK's deforestation - such as regulating all major forest-risk commodities listed in the consultation within 12 months of secondary legislation passing. This should not be too heavy a lift for business given that they should in any case be complying with relevant local laws.

In the medium term, UK government should also have a process to review and expand the commodity coverage beyond the initial list of eight commodities (or more specifically, seven commodities if beef and leather are treated as derived products of cattle).

A copy of the Options Analysis can also be found [here](https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf):
https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf

25. What data sources or information should be used to consider the proposed factors?

Please provide details about your answer, or use the file upload feature.

Please view:

- The uploaded Options Analysis document which provides broad estimates of the potential impact of different scenarios under Option 1, 2 or 3 – highlighting that even the most ambitious application would likely still see the UK contribute over 90,000 hectares in deforestation risk between 2023 and 2030 in the top forest-risk commodities alone. This highlights why the UK should be more ambitious, and regulate all major forest-risk commodities within 12 months. Commodities in scope should include cattle (beef and leather), cocoa, coffee, maize, oil palm, rubber and soy, as major drivers of deforestation, ecosystem conversion and human rights concerns linked to UK supply chains. At minimum it should regulate five commodities: cattle, oil palm, soy, cocoa and rubber within 12 months. (If the UK deviates from the EU and US model, and chooses to treat beef and leather as separate commodities, this would comprise six commodities.)

A copy of the Options Analysis can also be found [here](https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf):
https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf

- Please view the uploaded Addendum document which outlines the variety of existing tools, services and methodologies available for business to undertake due diligence. This is covered in Sections A and B, and Annex 1 and 2. Section C also outlines a robust proposed framework on land-related requirements which is also relevant.

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf):
https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

26. Do you have any further comments regarding the order in which we introduce key forest risk commodities?

Note the uploaded Options Analysis document attached Q25 which estimates various different scenarios under Option 1, 2 or 3. This highlights that even the most ambitious application would still see the UK contribute over 90,000 hectares in deforestation risk between 2023 and 2030 in the top commodities alone – and would therefore not even half our status-quo cumulative deforestation footprint for these commodities alone between now and 2030. This highlights why the UK should be

more ambitious, and regulate all major forest-risk commodities within 12 months. At minimum it should regulate five commodities: cattle, oil palm, soy, cocoa and rubber within 12 months. (If the UK deviates from the EU and US model and chooses to treat beef and leather as separate commodities this would comprise six commodities.)

A copy of the Options Analysis can also be found [here](https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf):
https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf

27. Which option for the first round of secondary legislation do you recommend?

- option 1
- option 2
- option 3
- No box ticked

Please state your reasons

We do not recommend any of these options. Note the uploaded document in Q25 which estimates various different scenarios under Option 1, 2 or 3 – highlighting that even the most ambitious application would still see the UK contribute well over 90,000 hectares in deforestation risk between 2023 and 2030 in the top forest-risk commodities alone. We also note that both the current EU legislative proposal and the US FOREST Act would apply to 6 of these listed commodities and within 12 months. This highlights why the UK should be more ambitious, and regulate all major forest-risk commodities within 12 months. At minimum it should regulate five commodities: cattle, oil palm, soy, cocoa and rubber within 12 months.

A copy of the Options Analysis can also be found [here](https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf):
https://www.globalwitness.org/documents/20338/Global_Witness_Analysis_-_UK_Forest_footprint_options_paper_-_March_2022.pdf

28. Should businesses fall in scope of the requirements if they exceed the turnover threshold in the previous financial year?

- Yes
- No
- Don't Know

29. Should we use UK turnover as the metric to capture UK based businesses?

- Yes
- No
- Don't Know

30. Which of the following metrics should be used to regulate the UK operations of businesses that are based outside of the UK under due diligence legislation?

- option 1: turnover related to UK activity
- option 2: global turnover

- Other - If you ticked other, please specify

Please state your reasons

As outlined further in the response to Q32 we believe that all companies should be in scope without exemption. This will avoid loopholes and streamline the provision of information to companies across the supply chain. Such an approach is in line with international standards, such as the OECD guidance on responsible business conduct and the UN Guiding Principles on Business and Human Rights. Schedule 17 of the Environment Act allows the provision for the Secretary of State to choose to apply the regulation to a company group – which should be done through the legislation.

If UK government chooses to not follow such a recommendation to ensure all companies are in scope, then any metrics related to inclusion in scope of UK-based or overseas-headquartered companies should be based on the global turnover of the company group. This global turnover approach would ensure greater consistency and clarity – ensuring that there is no loophole where a company group could simply create multiple UK companies to avoid meeting the threshold.

31. Can you provide any data or information that will help identify potential businesses in scope based outside the UK?

32. Which of the following factors should be considered when setting the turnover threshold level? Please tick all that apply.

- policy impact
- burden on business
- deliverability
- Other - If you ticked other, please specify

By policy impact, we mean the policy impact of halting the UK's role in global deforestation through its own commodity consumption. Under 'other' we have concerns about the £50 million (or higher) proposed turnover in Q.33 for defining which companies are excluded – it is critical that the regulation does not set a weaker standard than the existing precedents outlined in existing UK law, regulation and policy.

Noting:

- Schedule 17 of the Environment Act does not reference thresholds or other similar forms of exemption - creating a risk that secondary regulation will be subject to legal or similar challenges.
- The UK Timber Regulation, which applies to timber forest-commodities, applies to all businesses placing goods on the market.
- The OECD Guidelines on Multinational Enterprises – government-backed recommendations to companies – apply to all companies without exemptions based on volume or company size. This is also the proposed approach of EU legislation on forest-risk commodities.
- Neither the EU nor US proposals on forest-risk commodities limit the scope of companies by turnover

To ensure policy coherence with existing precedents under the UK Timber Regulation, the OECD guidance and comparative legal proposals in the EU and US (which do not place any limitations by turnover) – this should apply to all businesses, but take into account proportionate risk exposure for smaller businesses. This is also simpler to implement, avoids creating loopholes and creates clearer market conditions. If UK government does choose to adopt a company threshold, it should be based on global turnover of company group and align with existing definitions of company size to ensure that medium and large businesses are covered (e.g. Companies Act £25m turnover).

Please state your reasons

See above.

33. For each of the following commodities, please tick where the turnover threshold for inclusion of UK based businesses should be set.

	£50 million	£100 mill	£200 mill	Don't know
beef	X			
cocoa	X			
coffee	X			
leather	X			
maize	X			
palm oil	X			
rubber	X			
soy	X			

34. Do you have any further comments regarding businesses in scope?

As expressed by the UK NGO Forest Coalition, Global Witness is deeply concerned that Q33 did not provide an option to cover all businesses in scope. Global Witness strongly advocates that the legislation should **cover all businesses** – as also outlined in Q32.

JNCC, and other data, shows that the single largest commodity from a given country responsible for the UK's deforestation footprint is beef from Brazil. Of the most recent data Global Witness was able to see (for 2017, from Trase data) there were 17 UK importers of Brazilian beef. Roughly eight may meet the lower £50 million threshold – however five would not and whether an additional three would is also unknown. (One company was excluded as it has since been dissolved).

Similarly, an Environmental Investigation Agency analysis provided to Defra in 2021 also highlighted that based on turnover reported to Companies House at least half of the non-EU companies importing palm oil into the UK in 2020 were not even listed as 'large' companies (generally aligned in the UK Companies Act as a £36 million threshold, so even lower than the lowest turnover option presented).

The Stockholm Environment Institute also raised similar challenges on soy in their 2020 submission, noting: *"165 companies are listed in the HMRC Importers Details database as having imported soy, or soy-linked products, in 2019. 61 of these qualify as small and medium sized enterprises (SMEs). Seventeen of these SMEs imported soy-linked material in at least six separate months in 2019, indicating its importance in their supply chains."*

<http://www.ngoforestcoalition.org/media/dc2720c7-697b-497b-94a4-faca6005892b>

This raises strong concerns that any limitation of company scope would exclude a significant portion of forest-risk commodities. If UK government does choose to adopt a company threshold, it should be based on global turnover of company group and align with existing definitions of company size to ensure that medium and large businesses are covered e.g. based on definitions in the Companies Act.

35. Should we set a single exemption threshold for each regulated forest risk commodity, combining raw commodity use with derived commodity use?

- Yes
- No

No answer

36. Should businesses be able to use conversion factors to estimate the volumes of commodities used in the supply chain to understand whether they can be exempt from due diligence requirements?

- Yes
- No

37. Should we use the proposed approach for businesses to understand whether they could be exempt?

- Yes
- No

38. Which of the following factors should be considered when setting the exemption threshold level? Please tick all that apply?

- policy impact
- burden on business
- deliverability
- Other - If you ticked other, please specify

39. For each of the following commodities, please tick the scale at which the exemption threshold level should be set.

	1 tonne	10 tonnes	100 tonnes	1000 tonnes	Don't know
beef	X				
cocoa	X				
coffee	X				
leather	X				
maize	X				
palm oil	X				
rubber	X				
soy	X				

40. Please provide reasons for the scale selected for each commodity in Question 39.

Beef

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Cocoa

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Coffee

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Leather

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Maize

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Palm oil

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Rubber

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

Soy

Global Witness believes that no exemptions should be adopted. If exemptions are to be set they should be at the lowest threshold of 1 tonne for all commodities.

41. Do you have any further comments on the exemption?

42. Do you know the exact or estimated volumes of the forest risk commodities you use in your UK commercial activities in a given year?

43. What volume of each forest risk commodity do you use in your UK commercial activities in a given year?

44. What methodology do you use to calculate the volumes of each forest risk commodity you use in a given year?

45. Should businesses in scope be required through secondary legislation to 'eliminate risk or reduce risk to as low as reasonably practicable'?

- Yes
- No

Please state your reasons

Global Witness strongly recommends against the use of the language of 'reasonably practicable' as it is legally ambiguous and highly subjective. It could allow companies to use 'practicality' as an excuse for not ensuring that forest-risk commodities or goods they are using have been produced in compliance with relevant local laws and broader due diligence.

Businesses should be required to undertake mitigation activities based on a standard of no or negligible risk. A negligible level of risk means that a reasonable person would, in following a thorough consideration of the information that was or should have been identified and obtained by the regulated person, conclude that there is no cause for concern that relevant local laws were not complied with in relation to the commodity and products derived from that commodity.

46. Which of the following should we provide information on in guidance to support businesses to establish effective due diligence systems? Please tick all that apply.

- what is required of eligible business to comply with regulations
- examples of best practice to support businesses in improving their systems
- metrics and indicators to help assess where there are low, medium, or high risks of illegal land use and ownership
- methods that businesses may use to assess and mitigate risk
- available resources to help understand legal frameworks in producer countries
- Other - If you ticked other, please specify

Please state your reasons

On 'other':

Human rights abuses, including threats, are deeply concerning in and of themselves, they also often serve as a pre-indicator of illegality - including environmental crime, corruption and extra-judicial violence. Guidance to business should ensure that monitoring, identifying and responding to human rights concerns is outlined as a key pillar to effective due diligence. The UK already has various obligations to uphold human rights as a signatory to UN and other international treaties, under the OECD Guidelines on Multinational Enterprises, and also OECD Guidelines on Responsible Business Conduct, and with the emphasis on human rights emphasized in international climate agreements. The Global Resource Initiative 2020 report also emphasized the importance of government taking into account human rights and environmental concerns in a due diligence obligation. The UN IPCC has also highlighted the centrality of respecting indigenous peoples rights as key to achieving sound environmental and climate outcomes.

We provide further information in the Addendum document on due diligence tools, methodologies and approaches submitted at Q23 – particularly Section A and B, and Annex 1 and 2. This also refers to broader risk assessment that should be legally articulated in secondary legislation (Section D), as well as a land-specific section (Section C).

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf):

https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

On land rights:

Separate to the discussion of guidance, the secondary legislation (not guidance) itself needs to clearly outline what the requirements are of companies to comply with relevant local laws on land use and land ownership as required under Schedule 17 of the Environment Act.

The secondary legislation needs to clearly state that companies are required to:

1. **Name the relevant laws, and underlying statutes, regulatory structures etc that apply to the areas their forest-risk commodities and derivatives are sourced from.** This includes those that apply to the plantation, farms, point of origin and geo-locations which are ultimately producing the commodity to ensure that they are in compliance with their legal obligations under local laws related to the use or ownership of land.

The secondary legislation should include a non-exhaustive list of the categories of laws which come under this definition, and further government guidance can be provided in future.

2. **Specifically name and list the legal obligations that apply under these applicable laws**
3. **Show how they are complying with the obligations described in the relevant laws, statutes and regulatory structures that apply.** Companies should be able to evidence how the legal obligations described under the relevant laws, statutes and regular structures are met. It is particularly important to focus on showing that the obligations are met – as in high-risk jurisdictions documentation such as permits or licenses may be issued without a company or supplier having met the underlying legal requirements. (for examples, see Case study 2 and Case study 3 in the Addendum document submitted at Q23).
4. **Disclose whether they have been made aware of concerns regarding compliance.** This can include a company being alerted through direct communication or through media reports.

Schedule 17 of the Environment Act requires companies to only use commodities, and products derived from that commodity, if they were produced in compliance with relevant laws which relate to land use and land ownership. In order to deliver this aspect of the Environment Act, **it is a critical that the secondary legislation provides a working definition of the category of laws that constitute a ‘relevant law on land use and land ownership’.**

The secondary legislation should include a non-exhaustive list of the categories of laws meeting this definition. While individual laws, regulations and statutes etc may change over time the categories of laws will not.

An example of a non-exhaustive list of categories of law as defined in secondary legislation could include:

- rights or protections for specific populations – including indigenous peoples, traditional communities, afro-descendant communities and landless peoples;
- laws that relate to the rights of those using the land – including the rights of subsistence land users and laws that cover rights against unfair eviction
- environmental protections and licensing conditions
- commodity or industry-specific requirements
- zoning and development requirements and permissions – including requirements to produce impact assessments

- laws related to corruption, bribery or fraud
- land-related human rights protections – such as where international human rights law is ratified into local law, and parallel processes for international environmental treaties

This would provide clarity as to the types of laws, legal statutes and regulations covered. For example, a definition of Categories of Law in secondary legislation, should ensure that the below examples of relevant laws, legal statutes and regulations could be seen to come under one, or more, of these categories:

- The rights of long-term occupants and land users
- Usufruct rights
- 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 pertain to the rights to use or make decisions over land and its use in international human rights frameworks and International Labour Organisation Convention 169
- Prevention of specified areas from being used for the commercial production of commodities – including protected areas, sensitive habitats or other areas on which restrictions and additional requirements are issued
- 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 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 that a company, entity or individual can control, access or own
- Obligations and requirements that must be met in environmental and social impact assessments
- Environmental protection, restrictions on or conditions on the use of land
- Procedural and substantive requirements, including before concessions are granted, 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 and ownership

- Requirements designed to specifically designed to prevent bribery, corruption or fraudulent practices in that relate to tax or duty obligations related to ownership or land use

An in-depth discussion of this issue, examples and context for why this framework is needed and recommendations for secondary legislation and for guidance described in Section C of the Addendum document uploaded at Q23. Global Witness wishes this to be considered as supplementary evidence for our submission response to this issue.

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf):
https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

47. Should we set out in guidance how businesses may use existing certifications and standards to help meet the due diligence requirement?

- Yes
- No
- Don't Know

Please state your reasons

Schedule 17 of the Environment Act is clear in outlining the obligations of companies to ensure that their use of forest-risk commodities comply with relevant local laws. Guidance needs to be clear that businesses are ultimately responsible for their own due diligence obligations and legal compliance – and it cannot outsource responsibility for these obligations to third parties. While a business may use various tools (including third party services) to undertake due diligence – it is legally responsible for its due diligence to ensure that its obligations are met.

It is critical that loopholes are not created that allow businesses to evade such accountabilities. Letting businesses off the hook for failed due diligence – simply because they outsourced due diligence to third parties - would compromise the efficacy of the regulation.

A recent Greenpeace report *Destruction Certified* provides detailed information documenting how certification bodies are failing to enforce their own standards. <https://www.greenpeace.org/international/publication/46812/destruction-certified/>

This also notes that certification bodies are not independent, as they are ultimately accountable to their business members and clients which are core to their funding and business model.

48. Which of the following criteria should we set out in guidance to support the use of existing certification schemes and standards? Please tick all that apply.

- Proof of legality
- Chain of custody

- Robustness
- Transparency
- Other - If you ticked other, please specify

Guidance needs to be clear that businesses are ultimately responsible for their own due diligence obligations and legal compliance – and it cannot outsource its legal obligations to third parties. While a business may use various tools (including third party services) – it is ultimately responsible for ensuring that its legal obligations are met.

The Greenpeace report ‘Destruction Certified’ shows that certification has not helped companies meet their 2020 commitments to exclude deforestation from their supply chains. The report exhaustively documents factors with certification – such as weak enforcement, flawed auditing, poor traceability, inequitable governance and incomplete coverage of standards – that highlight why they are not a proxy for legal compliance. Pager 5-6 outlines key criteria for evaluating the efficacy of certification schemes.

<https://www.greenpeace.org/international/publication/46812/destruction-certified/>

Please state your reasons

Businesses should be required under UK legislation to show proof of compliance with local laws, chain of custody, robustness, full traceability as well as other factors that are indicative of heightened risks – such as deforestation, human rights abuses, conflict and local communities not providing their Free, Prior and Informed Consent. There should be no loophole that exempts a business from meeting its own legal requirements – for example, by allowing it to outsource its due diligence obligations to a third party (such as a certification body). This is particularly important given that certification bodies are not regulated under Schedule 17 of the Environment Act.

49. Please provide any relevant evidence on current business practices, methods, and metrics available to assess and mitigate risk.

Please see the attached Addendum document for an extensive list of existing tools – such as on traceability, due diligence and methodologies for auditing or investigating claims.

A copy of the Addendum document can also be found [here](#):

https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

Section A and Annex 1 provides in-depth discussion and evidence base on traceability. This shows that full traceability can, and should be, achieved – but requires a clear regulatory signal.

Section B and Annex 2 list examples of available databases, datasets, verification tools and the importance of having access to primary documents.

Section C includes an analysis of land-related issues – highlighting why certain approaches to due diligence fall short and what sorts of frameworks are needed.

Section D also identifies additional risks, such as environmental and human rights harms that are harms in and of themselves but are also often pre-indicators of illegality.

**50. Can you provide any evidence on the cost of carrying out due diligence?
Please provide details including how this relates to business size.**

51. Can you provide any evidence on the cost of carrying out due diligence for specific commodities?

52. Can you provide any evidence on the benefits to businesses of conducting due diligence for specific commodities?

53. If you answered Question 52, can these benefits be quantified?

54. Can you provide any evidence on the costs to consumers of businesses conducting due diligence?

55. What should businesses be required to report on to enable a regulator to identify areas for further scrutiny?

The secondary legislation should clearly outline required reporting obligations for companies. As examined extensively in the previously attached Addendum document at Q23, **legally obligated reporting requirements should include, but not be limited to:**

- **Providing a public dataset with full public traceability and transparency of commodity supply chains** including the geo-localisation (longitude and latitude) data of the land plot of production, as well as date or time range of production. It should also include: the name, contact details and address of any business or person from whom they have been supplied with the relevant commodities or products; the name, contact details and address of any business or person to whom the relevant commodities or products have been supplied. This should also include listing indigenous peoples and territories within the sourcing area. Companies should be obligated to provide datasets to regulators and be published in full on the regulator's website, and available to a company's buyers or clients. Global Witness also strongly argues for companies to be required to publish these datasets to their own websites. (Please also see Section A and Annex 1 of the supporting Addendum document on traceability).
- **Identifying, naming and showing compliance with each legal obligation under relevant local laws on land use and land ownership.** Please see the response to Q45, and supplementary information it refers to in the Addendum document, Section C.
- **Business should list the principle financiers of their company group.** The UK should adopt the model reporting obligation requiring agribusiness companies to list their principle financiers. (For further detail, see 'Box 3: Traceability and finance: Also critical for due diligence' in the Addendum document attached at Q23)

- **A public database of grievances**, including, but not limited to those that may related to non-compliance. (For further detail, see ‘Public datasets of grievances’ in Section A of the Addendum document).
- Companies should be required to collate and maintain for at least 5 years full contact details of producers and supply chains.

Public reporting of exclusion lists should also be encouraged.

In terms of this question, we interpret the term ‘further scrutiny’ to relate to due diligence requirements that allow regulators to identify risk that can be a precursor or high-risk indicator of a likely failure of legal compliance. In which case we would encourage UK government to also adopt the following requirements:

- 1. Business should be required to report on its land footprint through forest-risk commodities.** This recognises that illegal, violent and environmentally harmful practices are driven by business models premised on continual expansion of their land footprint. This is divorced from planetary boundaries and economic and ecological realities. Reporting should cover business efforts to cap and reduce its land footprint, and then its efforts to transition out of harmful land-intensive sectors.
- 2. Business should be required to report on all known links to environmental harm through its supply chain – including legal, not just illegal harms.**
- 3. Business should be required to report on any known human rights concerns or land conflict linked to its supply chain.** This can draw on various guidance under business and human rights frameworks. This should pay particular attention to, but not be limited to, threats or harms to human rights defenders, indigenous peoples and workers. (see further Section D: Risk assessment, in the document attached at Q.23). Business should be required to report on any concerns raised of threats or harms to human rights defenders, or other community members or workers – linked to companies or areas in its supply chain. This notes that human rights abuses are often a precursor to harmful and/or illegal environmental practices and illegitimate land acquisitions. This also notes the increasing threat of criminalisation of those peacefully speaking out on land and environmental issues. Business should also be required to report on its response to concerns raised regarding threats or harms to human rights defenders, or other community members or workers – linked to companies or areas in its supply chain.

As examined in ‘Box 4: Due diligence oversight and access to primary documents’ in the Addendum document attached at Q.23 - Global Witness would also strongly encourage public reporting that provides maximum transparency of primary documents, particularly those related to impact assessments and consultation processes.

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf):
https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

56. Should non-commercially sensitive information about businesses' due diligence exercises be made public to increase sector transparency and accountability?

- Yes
- No

57. What information should be made public about businesses' due diligence exercises to support accountability and decision making?

Information that should be publicly available includes:

- **Public datasets fully tracing supply chains back to the site of production:** This should include most importantly the geo-localisation coordinates, latitude and longitude, of all plots of land where the relevant commodities and products were produced, as well as date or time range of production. It should also include: the name, contact details and address of any business or person from whom they have been supplied with the relevant commodities or products; the name, contact details and address of any business or person to whom the relevant commodities or products have been supplied.

This is critical to allow data to be independently verified, establish trust in the due diligence process and create early warning systems to alert companies of potential legal or other violations on the ground. It also assists businesses, NGOs and others to cross-check local reports on risks.

This is particularly needed given that an estimated 69% of forest-risk commodities are produced illegally. Public datasets are also needed to independently verify that data. Sourcemap notes that an estimated 15-20% of raw commodities are fraudulent. Global Witness' **Beef, banks and the Brazilian Amazon** and **Trading Risks** reports are examples of the need of independent verification of publicly traceable supply chain data to identify undeclared concerns about illegality and other concerns.

(Please also see Section A and Annex 1 on traceability in the Addendum document uploaded at Q23. This also addresses the misuse and abuse of commercial in confidence clauses which serves to evade accountability). See also 'Box 1: Traceability in the EU legislative proposal on forest-risk commodities and the US FOREST Act (S.2950)' to see how requirements on traceability have been outlined in those legislative proposals.

- **Public datasets of grievance lists**

- **Publish their model contracts:** This allows third parties to identify what legal, human rights, environmental and transparency requirements a company is, or is not, writing into its contracts with suppliers. This also helps to gain greater understanding of a company's due diligence practices (for example, where a business is not legally requiring compliance with its own risk policies).
- **Documents where companies identify and name the relevant local laws that apply to their sourcing; the legal obligations that apply under those laws; and show compliance with each of these legal obligations.** See further our response to Q45; Section C of the Addendum document attached at Q23 and 'Box 4: Due diligence oversight and access to primary documents' of the Addendum document.

When coordinated with full traceability datasets, this will allow independent third-parties to verify any indigenous territories, protected areas, biodiverse regions, areas of high land conflict or other high-risk areas in or near catchment areas.

- **Businesses reporting under the legislation should also list their principal financiers in their annual reports.** (As per the model of certain existing agribusiness companies in Malaysia and Singapore, described in 'Box 3: Traceability and finance: Also critical for due diligence', in Section A of the Addendum document attached at Q23). This will ensure that it is easy for third parties (including NGOs, shareholder groups etc) to alert banks and investors of concerns regarding the businesses they invest in – this increases accountability that business' face from both regulators and the market. By companies disclosing their principal banks this will also ensure that banks or investors cannot hide behind claims that companies do not wish to be named as a client of the bank.
- **Documents or evidence related to Free, Prior and Informed Consent (with consent from rights-holders), community-led impact assessments, human rights impact assessments or environmental impact assessments.** For further discussion of this see Annex 2 in the Addendum document.

Additionally, this will help to streamline due diligence for businesses as they will be requesting this information from companies in their supply chain, ensuring this information is publicly available will also reduce their burden.

For further detail see the Addendum document attached at Q23.

A copy of the Addendum document can also be found [here](https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf):
https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

58. Which criteria should the enforcement authority fulfil? Please tick all that apply.

- UK-wide remit
- capacity to regulate
- capability and experience to deliver
- Other - If you ticked other, please specify

59. Should the maximum variable monetary penalty be £250,000?

- Yes
- No
- Don't Know

60. Do you have any further comments on the enforcement regime?

Enforcement requires a well-resourced regulator with sufficient expertise and powers, facilitated by strong information-sharing obligations on companies as well as mechanisms for input by third parties. This enforcement system relies on transparency and provision of public information to support regulatory function.

Civil sanctions should be effective, proportionate and dissuasive, and include the full range of potential sanctions available (including fines, discretionary requirements, stop notices, enforcement undertakings). **Criminal offences should be included** for deliberate or repeated non-compliance, with strong penalties (eg the UK Bribery Act (2010) includes up to 10 years' imprisonment and unlimited fines). Sanctions against directors should also be considered. Critically, there also needs to be a mechanism that those harmed by deforestation and land rights violations have a form of redress and support.

The Regulator should maintain, and make public, the following information:

- **Traceability dataset of supply chains as companies are required to submit to regulators**
(and which is traceable back to the geolocation coordinates (latitude and longitude) or similar point of origin that a commodity is produced)
- **Complaints received**
- **Action taken and details of operator found in non-compliance**
- **Information on the findings of regulator investigations**
- **Annual reports of companies**

While secondary legislation needs to articulate a non-exhaustive list of the **Categories of Law** that comprise relevant local laws on land use and land ownership is clear, regulators could also provide further guidance on specific laws. For example, a best practice example would be to evolve a searchable database, by commodity and by sub-national district that stakeholders can continue to expand and review, as a non-exhaustive list of examples of likely relevant laws.

Obligations on companies:

- **Complete declarations when importing commodities** (or otherwise when placing them on the UK market) confirming that adequate due diligence on the commodity has been completed, referencing how that due diligence has been done. This will immediately alert the regulator to what needs to be checked, and simplify prosecution in cases where due diligence is not completed, as it may be easier to prosecute for misdeclaring the product.
- **Provide a traceability dataset to regulators, which allows the production sites of commodities to be traced back to their geolocation (latitude and longitude) of production.** The secondary legislation should also require that companies selling commodities or derivative products make this available to clients and/or potential clients on an ongoing basis. We would strongly emphasize an obligation for companies themselves to make this information public.
- **Information that names the relevant local laws on land use and land ownership that apply to their sourcing areas, and any underlying frameworks (such as regulations etc); their legal obligations under these laws; and evidence to show that each of these legal obligations has been met.**
- **Maintaining all due diligence records for at least 5 years.**

As outlined in the Addendum document attached to Q23 of this submission, full supply chain traceability is the most critical information for companies to report and make publicly available. We also recommend requirements to publish grievance lists, exclusion lists and best practice of making all relevant primary documents of risk assessments, public consultations etc available (as outlined further in the Addendum document).

Companies should also be required to submit **annual reports detailing the company's due diligence approach, actions and outcomes.** This should detail how the company has undertaken its risk assessment, what its exclusion criteria are, and how they have avoided or addressed risks.

Enforcement authority obligations should include:

- **Assessing company due diligence reports** based on indicators of non-compliance risk. Reports should be submitted digitally and made publicly available. Risk-based monitoring should be used to verify data from a minimum percentage of companies and trade volumes for each commodity.
- **Operating an accessible and transparent mechanism for the public to submit complaints and concerns about potential non-compliance.** This is critical to support enforcement as well as providing some form of access to justice for people affected by non-compliance.
- **Developing and maintaining a public searchable online register of key**

information (the Central Information System) supporting compliance and enforcement, including:

- Names of all companies subject to / covered by the regulation
 - Company due diligence reports
 - Collated information on relevant local laws in different jurisdictions, compiled and updated on the basis of wide consultation with stakeholders
 - Complaints or concerns raised with the authority regarding non-compliance
 - Traceability data
- **Publishing guidance** to support company compliance.
 - **Publishing an annual report on enforcement actions** taken, including complaints/concerns received and actions taken in response, and investigations conducted.
 - Maintaining a **public list of non-compliant companies**

A copy of the Addendum document can also be found [here](#):

https://www.globalwitness.org/documents/20337/Global_Witness_Addendum_-_Due_diligence_tools_context_and_recommended_frameworks_on_legal_requirements_and_compliance_-_March_2022.pdf

This section has discussed broader penalties and enforcement beyond the monetary penalties discussed in Q59. However, as a note on Q59 **monetary penalties should be dissuasive and impactful, such as a percentage of annual global turnover, not a fixed maximum**. Fines of max £250,000 are not dissuasive for companies. The Data Protection Act has provision for fines of maximum £17.5 million or 4% annual global turnover (whichever is greater) and the EU deforestation legislative proposal sets it at least 4% annual turnover.