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UK Environment Act: Use of Forest Risk Commodities in Commercial Activity (Schedule 17)

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What is the current status and planned timeline of the legislative agenda?

In November 2021, the UK adopted the Environment Act, a wide-ranging law on water, waste and resource management, air quality and biodiversity. Schedule 17 focuses on forest risk commodities linked to commercial activities. This draws on a recommendation by the UK Global Resource Initiative (UK GRI) to introduce a mandatory due diligence obligation¹ for the UK supply chain.

Secondary legislation is required to determine the commodities and businesses in scope, reporting requirements and timelines for implementation. From December 2021 to March 2022, the UK government consulted the public on these questions, with an initial response published in June 2022² and further updates expected from the UK Department of Food, Environment and Rural Affairs.

What is the scope of the legislation in terms of commodity and ecosystem coverage and treatment of illegality?

The regulation prevents the use of a forest risk commodity or its derivative in UK commercial activities unless 'relevant local laws' are complied with in relation to that commodity (with exemptions for some products covered separately under Renewable Transport Fuel obligations). The primary commodities currently considered for inclusion are soy, palm oil, cocoa, maize, beef & leather, rubber and coffee.

'Forest' here means an area of land of more than 0.5 hectares with a tree canopy cover of at least 10% (excluding trees planted to produce timber or other commodities),

1. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881395/global-resource-initiative.pdf
2. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1080235/due-diligence-uk-supply-chains-summary-of-responses.pdf

with ‘commodities’ only covering those produced from a plant, animal or other living organism (but excluding timber products).

‘Relevant local laws’ means any laws having effect in the country or territory where the source organism was grown, raised or cultivated and which relate to the ownership and use of land. The government has clarified that commodities are subject to the legislation as long as their location of production is protected by local laws. This offers potential protection to non-forest ecosystems, although the ‘forest’ definition defines commodities in scope.

‘Regulated persons’ (businesses) meeting a minimum financial turnover (business size) threshold³ must establish a due diligence system. This must be able to identify and obtain information about the commodity, assess the risk that relevant local laws were not complied with, and lay out steps to mitigate that risk. A company can apply for an exemption if their use of a commodity does not exceed a volume threshold (to be prescribed in secondary legislation). Each regulated person must provide an annual report to the regulatory authority.

Many details remain to be set out in secondary legislation. This includes how regulated persons must conduct due diligence, report and make disclosures, as well as the enforcement framework, the nature of any penalties for non-compliance, and any cut-off dates after which non-compliance will be penalised.

These issues will be reviewed regularly based on the amount of forest converted to agricultural use; the likely impact of the provisions on forest conversion or the use of forest risk commodities and their derivatives; and any changes to relevant local laws.

What are the points of (a) common ground and (b) contention by different stakeholders?

The regulation has been generally positively received by UK stakeholders, including NGOs and the private sector. The vast majority of respondents to initial⁴ consultations supported its introduction. Many consumer-facing companies have engaged in voluntary roundtable discussions at both UK and international levels, with the Retail Soy Group (22 major food sector businesses) welcoming proposals to set a level playing field.

A major point of contention is the focus on illegality. An open letter⁵ compiled by the Retail Soy Group called for the law to also tackle legal deforestation. In contrast, respondents from overseas public bodies (representing producing governments and ministries) expressed ‘strong concerns’ about a broadening of scope beyond legality, on the grounds of barriers to trade and producer costs.

3. In their response to the most recent public consultation the government confirmed this would be aligned with the definitions used in the UK Companies Act and would be based on the previous year’s turnover.

4. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/933985/due-diligence-forest-risk-commodities-government-response.pdf

5. https://www.retailsoygroup.org/wp-content/uploads/2020/10/Letter-on-due-diligence-consultation_final.pdf

A vast majority of respondents suggested that the regulation should apply to all businesses, but with suggestions that this could be tiered (i.e. higher requirements on larger companies). Responses also questioned including businesses based on financial turnover rather than volume of material handled. A significant number further expressed concern over the strength of measures in local laws to tackle deforestation, and the possibility of deregulation in source countries.

A summary of responses to the most recent public consultation has just been published.⁶ Civil society has expressed concern over timeframes, questioning the government's suggestion that implementation for five to seven commodities could take up to five years. Several called for business turnover thresholds for company inclusion to be kept low.⁷ At the current time, however, the government has not confirmed its approach.

What are the main risks the legislation will not achieve its objectives?

The legislation exists within the context of the UK government's broader strategy⁸ to "leave a lighter footprint on the global environment by enhancing sustainability and supporting zero deforestation supply chains".

The most obvious risk is the legislation's scope. It will not directly impact the provision of material into the UK that is linked to legal deforestation. Additionally, a phased introduction of commodities risks a fragmented approach across the UK's supply chain. Palm oil, soy and beef are likely to be included sooner, but other important commodities (such as cocoa or coffee) could be left out initially due to their association with lower global forest conversion – with implications for regional deforestation and associated biodiversity loss. Excluding small and medium sized enterprises also leaves a segment of the UK supply chain uncovered, though all UK companies handling deforestation-risk products are in scope. These limitations increase the risk of leakage, whereby some products for the UK market are produced in compliance with local regulations but others are not.

Another key risk is the UK's relatively small share of the global market. Landscape-scale influence to tackle deforestation or to enhance local legislation is likely to be undermined if there remains sufficient unregulated demand for production. The legislation will need to work in conjunction with other emerging supply chain regulations, and with a broader portfolio of policy instruments. The UK government cites this as a reason for focusing on illegal production: "this approach is the best way of balancing concern for environmental standards and respecting the right of countries to determine their own policies on land use and climate change".

6. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1080235/duediligence-uk-supply-chains-summary-of-responses.pdf

7. The view that all companies should be in scope was strongly expressed by two NGO responses, although the threshold for larger businesses was already confirmed by the UK Government.

8. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/693158/25-year-environment-plan.pdf

What are the main barriers to implementation on the ground?

It is unclear precisely what traceability information will be needed to demonstrate compliance but demonstrating legality implies knowledge of where, and from whom, commodities originate. Many in the private sector stress that financial provisions and guidance are likely to be required to achieve this. A large proportion of the supply chains of forest risk commodities currently lacks full traceability to plot level. Despite private sector commitments to increase traceability in certain commodities/regions, businesses will likely face data challenges in more informal production markets, where there are multiple processing stages (the regulation covers derived commodities), and/or in the presence of non-segregated supply chains. Moreover, assessing compliance with local laws requires knowledge of that regulatory environment, its coverage, and enforcement processes. How certification could be used to demonstrate compliance (as the UK government has suggested) remains unclear.

This also presents a challenge to the regulator, who must screen due diligence reports for their veracity to distribute any penalties for non-compliance. This will likely require significant financial resourcing; otherwise, compliance may be undermined.

Small businesses are not directly regulated, but they will almost certainly be approached by larger companies for supply chain information. Many have limited capacity to respond without additional support (e.g. direct assistance from clients or via price premiums). Government-led incentives may reduce this burden. Support requirements for countries where forest risk commodities originate are also a key concern, in order to compensate for any additional burdens.

Annex

	EC proposal	US FOREST Act	UK Environment Act – Schedule 17
Overview of prohibition/standard	Commodities or products in scope cannot be placed on EU markets unless they are deforestation- and forest degradation-free (after 31 December 2020), have been produced in accordance with local legislation, and are covered by a due diligence statement.	It will be unlawful to import any product made wholly or in part from a commodity in scope that is produced from land that undergoes illegal deforestation after the date of enactment.	Prohibition on using deforestation-linked commodities and their derivatives that have not been produced in accordance with local laws relating to the ownership and/or use of land. No specific cut-off dates currently defined.
Commodities in scope	Cattle, cocoa, coffee, oil palm, soya and wood products covered under the EU Timber Regulation.	Products "made wholly or in part from" palm oil, soybeans, cocoa, cattle, rubber, and wood pulp.	Cattle (beef & leather), cocoa, coffee, maize, palm oil, rubber and soy could all be within scope, but secondary legislation is necessary to determine this. Introduction could be staged over time.
Forest definition	Using FAO Forest Resource Assessment definition of "forest" to define deforestation. "An area of land greater than 0.5 hectare on which there are trees higher than five metres with a canopy cover of more than 10%".	A "natural forest" is defined as "a natural arboreal ecosystem that (A) has a species composition a significant percentage of which is native species; and (B) includes (in alignment with FAO definitions) – (i) a native tree canopy cover of more than 10 percent over an area of not less than 0.5 hectares; or (ii) other wooded land with a combined cover of shrubs, bushes, and trees of more than 10 percent over an area of not less than 0.5 hectares.	"Forest" defined in alignment with FAO definition as "areas of land of more than 0.5 hectares with a tree canopy cover of at least 10%".
Deforestation definition	The conversion of forest to agricultural use, whether human-induced or not (see definition of "forests" above). Forest degradation is also in scope for wood products. The scope of legislation also includes relevant legislation in producer countries (although the scope of this is not yet clear).	Loss of natural forest resulting from the whole or partial conversion of natural forest to (A) agricultural use or another non-forest land use; or (B) a tree plantation. Only if commodities are grown on deforested land according to the definitions in the bill would importers need to consider legality.	Scope of legislation is defined by compliance with local land use laws, which are not necessarily only relevant for forest ecosystems.

Businesses in scope	All operators (which includes large traders) placing in-scope goods on or exporting them from the EU market would be subject to the regulation. However, reduced due diligence requirements present for small and medium-sized enterprises traders as well as operators and those who are microenterprises who have 24 months to comply, whereas all other operators have 12 months.	Applicable to all importing companies.	Only large companies will be in scope, with the turnover threshold to be set in secondary legislation. Will apply to any large companies using in-scope commodities in the UK no matter their supply chain position. Exemptions for companies handling small volumes.
Domestic commodity production coverage	Yes; production within EU markets, including for exports, is within scope.	No; applies only to imported material.	Requirement for compliance with local laws suggests domestic commodity production would be in scope.
Due diligence expectations	Establishment of a system to identify and obtain information about commodities, assess risk and mitigate. Information supplied must demonstrate no or negligible risk of deforestation, forest degradation and illegality.	Importers must take "reasonable care" (an existing principle in US customs law) to assess and mitigate risks that commodities were produced on illegally deforested land. Customs and Border Protection is instructed to publish within 90 days of enactment guidance on what constitutes reasonable care, which may be commodity-specific if warranted.	Requires the establishment of a system to identify and obtain information about commodities, assess risk of non-compliance with local laws and mitigate risk. Exact details to be outlined in secondary legislation.
Risk benchmarking	Yes; low-, standard- or high-risk sourcing locations to be defined at time of enactment and reviewed periodically. Simplified due diligence processes for low-risk areas, enhanced checks for high risk regions. Benchmarking at national and subnational levels (but granularity unknown at subnational).	Yes; default and high risk, with simplified import declaration requirements for default-risk countries.	No indication that benchmarking will be used.
Supply chain information requirements	Geolocation of plot-level points of production required for sourcing across all risk levels. Additional information must demonstrate that the absence of deforestation and forest degradation and legality requirements are fulfilled. A due diligence statement is required.	Import declaration with point of production (or all possible points) for designated commodities from high-risk countries only (with risk level defined on a commodity-by-commodity basis), identified by the smallest administrative unit of land possible (concession, farm, ranch etc). Additional information is required documenting steps taken to mitigate risks.	Traceability requirements currently unclear; requirements expected to be defined during the development of secondary legislation. Companies must establish and implement a due diligence system to identify and obtain information about that commodity; assess risk that relevant local laws were not complied with; and mitigate risk.

Public reporting requirements	Operators (excluding SMEs) are expected to publicly report on an annual basis on their due diligence processes (including risk assessment and mitigation).	No public reporting required of companies. Import declaration information will later be made public (subject to protections for confidentiality) by Customs and Border Protection.	Companies must provide the regulating authority with an annual report on actions taken by the company to establish and implement due diligence. Expectation that at least parts will be made publicly available.
Penalties	Penalties to be established by Member States, but with should include as a minimum fines (of up to 4% of annual turnover), confiscation of materials, temporary exclusion from public procurement.	Penalties could include seizure and fines, following existing civil and criminal penalties under US Customs Law.	Potential sanctions, including fines with current suggested maximum of £250,000 (but to be defined in secondary legislation).
Audits	"Competent authorities" at Member State level must carry out annual checks covering at least 5% of operators and 5% of quantity of relevant commodities. This moves to 15% for high-risk regions.	Random audits of importer filings carried out by US Department of Agriculture; Customs and Border Protection has broad discretion for auditing and must report annually to Congress on audits and investigations carried out.	Auditing process to be set out within secondary legislation.
Evidence from third parties	"Substantiated concerns" may be submitted to competent authorities by any "natural or legal persons".	Formal mechanism to receive information from outside sources to be established by Customs and Border Protection within six months.	Not specified to date.



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