

SEI Response to the UK Due Diligence Secondary Legislation Consultation

Introductory passage

This document provides a response to the UK Government's public consultation on the implementation of due diligence to help tackle illegal deforestation in UK supply chains.

Our response to the consultation can be found below, structured according to the questions posed by the UK Government in their public consultation. The [background document for the consultation](#) should be referred to in order to orient our responses against the context of the proposals put forward by the UK Government.

SEI welcomes the introduction of this legislation, which has the potential to support deforestation-free production. However, we have some concerns about several aspects of the proposals, including particularly:

- **The levels of ambition for the scope of commodities included and the timeliness of their introduction into legislation ('legislative sequencing')** The rationale for a limited scope of commodity, including the length of time required to increase the scope, is not justified, and a broader, expedited time frame would make a significant difference to whether the policy is successful or not in reducing the UK's footprint and driving down deforestation worldwide, even if it means enforcement of the legislation is staged.
- **The business turnover thresholds proposed:** Which should be set as low as possible whilst acknowledging that they can only (due to the inclusion only of large businesses in the primary legislation) be set at a minimum of £36m per annum. Higher thresholds risk substantially weakening the regulation.

Full responses on these, and other areas of questioning, can be found below (SEI responses are formatted in italics). In addition, we would stress that overall, the introduction of the legislation needs to be supported by complementary measures to ensure that the UK's objectives of ensuring that both deforestation free UK supply chains, and sustainable production in landscapes associated with deforestation are realised. The fact that the legislation does not encompass legal sources of deforestation, and does little directly to incentivise supply chain actors to work with regions of production to improve production standards, necessitates the urgent and rapid development of a broader suite of policies, including those which work in partnership with the private sector to achieve these ambitions.

A background to the contributors to this response, and a disclosure of their interests can be found at the end of this document.

This response includes contributions from:

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Most of the contributors listed above work on a number of projects within roles at SEI, including the [Trase](#) initiative and the Global Challenges Research Fund (GCRF) [Trade, Development and the Environment \(TRADE\) Hub](#). As part of our work, over the past several years, SEI has actively engaged with UK and European based organisations and activities seeking to respond to global deforestation and biodiversity loss. This includes the UK/EU's role in these impacts via consumption and international trade. SEI's activities include:

- Engagement in the UK's Global Resource Initiative (GRI), including supporting inputs into the 'monitoring and reporting' recommendations of the GRI;
- Engagement with and advisory input to the Forest, Agriculture and Commodity Trade (FACT) Dialogue;
- Engagement with, and provision of data to, the UK Roundtable on Sustainable Soya, and associated reports, and more recently the UK Soy Manifesto Working Group;
- Collaboration with the UK's Joint Nature Conservation Committee on the development of a consumption-based indicator for the UK's overseas environmental impacts linked to the 25 Year Environment Plan;
- Discussion with teams within Defra and BEIS on the role of the Trase initiative and data in supporting monitoring of agri-commodity-linked deforestation and supply chain risk;
- Support for the French Ministry of Environment data platform for embedded deforestation, the Belgian Government on the development of their deforestation-linked imports strategy, and support to the European Parliamentary Research Service on their value-added assessments of EU proposals on due diligence;
- Extensive academic research on quantifying the spatial and temporal linkages between commodity production, trade and consumption, including development of environmental impact and risk metrics (linked to land use change, biodiversity and climate), and research into the governance mechanisms which interact with sustainability commitments acting within, or on, these supply chains.

About you

Question 1. What is your full name?

Christopher David West

Question 2. What is your email address?

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Question 3. What country are you based in?

United Kingdom

Question 4. Would you like your response to be treated as confidential?

No

Question 5. Are you responding:

- *on behalf of an organisation*

About your organisation

Question 6. What type of organisation are you responding on behalf of?

- *non-governmental organisation*

Question 7. Please provide your organisation's name.

Stockholm Environment Institute

Question 8 to 20 do not apply to non-businesses

Implementing the due diligence requirements

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

Yes. Robust legislation should be introduced within the earliest possible time frame to minimise the risk of continued illegal deforestation associated with UK supply chains. Deforestation linked to critical agricultural commodities continues at pace, and the earlier legislation is introduced the more likely steps to reduce this association with UK supply will be implemented and enforceable. The consultation outlines a minimum 6-month period to prepare for implementation and we would encourage the UK Government to work actively to ensure this timeline is met to ensure that clarity around the scope of the legislation is communicated as quickly as possible, and to ensure that the legislation becomes active as soon as possible.

At the same time, the introduction of the legislation needs to be accompanied by robust and transparent monitoring, reporting and verification systems to ensure that objectives are being met and progress can be validated by third parties. In addition, it is vital that the legislation does everything it can to ensure that UK company responses to the legislation do not simply result in dissociation from areas of high deforestation (e.g., South America, South-East Asia, etc.) - with the effect of cleaning the UK's supply chain but failing to contribute towards reductions in deforestation on the ground. In order to support zero-deforestation within landscapes it is important that concrete steps towards reducing deforestation in regions of production are taken, and not simply a 'pullout' from high-risk regions (which may drive perverse outcomes of exacerbating deforestation by creating a space for less responsible buyers and markets to occupy). Taking steps toward the introduction of a robust system to ensure that the legislation does not risk unintended consequences may require some slight delay to implementation. One option is to stage implementation so that initial due diligence/risk assessments are mandated initially, but with penalties occurring only after a longer timeframe to ensure that mitigation measures, including more detailed traceability data to demonstrate positive engagement in challenging regions - can be put in place before any penalties are imposed.

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

The legislation as framed will only apply to large businesses, with the resources to rapidly mobilise to conduct risk assessments/due diligence. Many have already engaged in voluntary measures, both in the UK and e.g. across Europe. Therefore, we would encourage regulation to come into effect as soon as practically possible. This legislation is being prepared alongside comparable legislation in the EU and by EU member states, and there is a not-to-be missed opportunity to "raise the floor" on standards and "level the playing field" in as unified and coordinated a way as possible. Doing so will reduce the cost burden, especially for companies operating across multiple markets, while also ensuring that compliant actors do not suffer any unfair competitive disadvantage.

Identifying key commodities in scope

Question 23. Can you provide any further evidence on commodities that drive deforestation? Please provide details here.

There is good evidence that certain commodities are key drivers of tropical and sub-tropical deforestation, and those identified in the consultation (beef, cocoa, coffee, leather, maize, palm oil, rubber and soy) are well-established as important. Extending due diligence policy to all these commodities is justified. However, this is not an exhaustive list of commodities that might be considered as 'high risk'. For example, a rapid evidence synthesis of [UK exposure to tropical and sub-tropical deforestation risk](#) highlights atypical commodities such as sugar, pepper and other spices as potentially high-risk (estimates based on land balance methods for allocating deforestation to commodities, from Pendrill et al. 2020). As Defra will also be aware, several commodities appear alongside the more well-established forest-risk commodities and are very important in the [UK's overall tropical and sub-tropical deforestation](#)

[footprint](#), e.g. rice, beans, cassava. For some of these commodities (e.g. cassava) direct linkages to the UK economy may be relatively small (the consumption-based estimates provided by the JNCC/SEI indicator work include estimates of embedded as well as direct consumptive use) but the fact remains that where such products ARE imported directly for consumption in the UK they may be associated with a high risk of deforestation and therefore should also be considered as part of future due diligence requirements.

The legislation should consider not just current deforestation rates, but also historical levels, and potential future commodity expansion, as well as the current threat status of the ecosystems where they are produced. For example, UK exposure to beef is currently the highest risk commodity according to the [UK indicator](#) with much of this exposure likely to be in the form of processed meat products (given the prevalence of domestic or Irish fresh meat in the UK supply chain). Most recent estimates of the beef 'footprint' indicate that deforestation risk has come down significantly from historic levels, but has also been increasing again; a potential warning sign that the dynamics of beef production could easily revert back to a 'high impact' scenario. Likewise, whilst coffee production is associated with relatively low rates of tropical and sub-tropical deforestation compared to e.g. beef, soy, palm oil, they have increased markedly more recently in the available time series (2005-2017), in particular connection with Honduran production. Moreover, many tropical and subtropical highland regions where coffee (and also cocoa) are produced are under particularly high levels of threat. And the loss of one more hectare of forest in these systems will have a much greater impact on loss of ecosystem services and biodiversity than the loss of one hectare from an ecosystem the majority of which has not yet been cleared. These dynamics argue for the inclusion of a broad range of commodities, but also highlight the fact that commodities with stronger or weaker links to deforestation will be very variable across space and time, and criteria for inclusion cannot be limited to an absolute assessment of hectares of conversion, but also need to account for hectares of conversion relative to remaining ecosystem extent.

Because of uncertainty in allocating deforestation explicitly to commodity products, policies which only focus on specific commodities are unlikely to adequately address the issues associated with deforestation at landscape scale. For example, attempting to address deforestation in Latin America without taking into account complex dynamics across beef, soy and maize systems is likely to be difficult. The phenomenon of deforestation for initial land use as pasture, followed by inter-cropped soy and maize plantations is not uncommon, and indicates that all three commodities comprise key inter-related drivers of the overall 'deforestation risk'. Ultimately, this argues for two things: a) that due diligence policy should encompass as broad a range of commodities as possible, and that b) any due diligence policy is supported by robust supply-side governance approaches at landscape level which extend beyond direct UK-supply chain concerns.

Legislative sequencing

The consultation asks whether to prioritise a slower implementation of due diligence legislation across all proposed commodities, or whether to more rapidly implement a few commodities and introduce others over time. If the latter, what aspects should determine the order of introducing these commodities.

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

- the commodity's impact on global deforestation
- the UK's role in this global deforestation
- ability to deliver effective regulation
- other (please specify)

TICK ALL

All the above factors are reasonable when considering how legislation should be staged. However, as discussed, solutions that avoid overlooking important deforestation-risk commodities should be actively pursued, even if this means some staging of risk assessment and enforcement is required. The data and competencies exist to deliver effective regulation.

As above, for some important commodities, the UK will have a more or less 'direct' relationship with sourcing regions. The degree to which supply chain relationships are 'direct' is likely an important factor in the ability not just to deliver effective due diligence regulation, but also with regard to the broader objectives of UK policy (e.g. through a partnerships agenda to positively influence the adoption of more sustainable practices in landscapes of production) and in relation to which other countries (e.g. European nations acting as re-exporters to the UK) require engagement to effectively deliver UK ambitions.

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

The work of e.g. Pendrill et al. 2020, Trase, and the JNCC/SEI UK Indicator, along with other studies referenced in the consultation documentation, all provide effective datasets to indicate the commodity impact on tropical and sub-tropical deforestation.

Additionally, assessment of the underpinning drivers of change in the UK footprint results (e.g. changes in rates of tropical and sub-tropical deforestation, changes in direct trade, changes in consumption etc) have just been commissioned by JNCC and will be delivered by SEI in early-April and will assist in identifying emerging risks and the 'directness' of supply chains.

The 'ability to deliver effective regulation' also depends on the ability for the regulation to respond to changing rates of deforestation over time, so that, for example, the scope of legislation can be adjusted. Investment in local yet minimally harmonised deforestation monitoring systems is likely to be critical here as these will help provide near-time information - e.g. through alert systems such as [Mapbiomas](#) alerts - on changing deforestation frontiers which would otherwise be slow to become apparent in e.g. global trade analyses which suffer from time-lags. The UK should therefore seek to support the development and maintenance of such systems.

Further active consultation with UK companies would be warranted to assess how due diligence based on legality interacts with existing and forthcoming voluntary measures. The cost/benefit analysis dismisses voluntary measures as likely ineffective at addressing

deforestation risk, given past lack of progress, but there is a large assumption inherent in the regulation that a focus on the illegality of deforestation will address deforestation rates. Ultimately, voluntary measures will continue to be an important component of the UK response to deforestation in the absence of due diligence regulation that explicitly focuses on deforestation regardless of legality. Achieving high level goals, including the transition to an agricultural system compliant with 1.5 degree global heating scenario, requires an iterative “ratcheting up” of ambition over time - where regulatory measures (setting a “floor” on standards) and voluntary measures (setting a “ceiling”) work in concert to drive a virtuous cycle of improved sustainability outcomes, and improved market access for more sustainable products.

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

No comments

First round of secondary legislation

Question 27. Which option for the first round of secondary legislation do you recommend? Please state your reasons.

The options outlined in the consultation were as follows:

Option 1: introduce 2 commodities in the first round of secondary legislation Officials estimate this would take 18 to 24 months to come into effect, including a minimum period of 6 months for businesses to prepare for regulation.⁹ During that time, we would continue to work on how other commodities can be introduced in subsequent rounds, which could follow swiftly.

Option 2: introduce 3 to 4 commodities in the first round of secondary legislation Officials estimate this would take 3 to 4 years to come into effect, including a minimum period of six months for businesses to prepare for regulation. As with Option 1, we would continue exploring how to introduce other commodities in subsequent rounds.

Option 3: Introduce 5 to 7 commodities in the first round of secondary legislation Officials estimate this would take 4 to 5 years to come into effect, including a minimum period of six months for businesses to prepare for regulation. We could then start work to assess other forest risk commodities for inclusion in scope, including those which may become key drivers of deforestation in the next five years.

Option 3

The consultation document argues that the inclusion of multiple commodities would require a longer implementation period because the requirements will need to be tailored to the supply chain of each regulated commodity.

However, it is not clear how Defra has reached this conclusion, given that the key criterion is linked to legality of production. The assumption of five years for implementation cannot, on the basis of the information presented, be taken at face value and has to represent a worst-case scenario. The urgency of this legislation to help meet the UK's climate and biodiversity targets has been set out at the highest level.

It is particularly important to note that all commodities in potential scope of the legislation will require essentially the same two steps of risk assessment, underscoring a high level of cost-saving and synergy:

- 1. Identification of the origin of materials;*
- 2. Assessment of whether production has taken place in compliance with local laws.*

Step 1 is more or less complex for a business to assess depending on the commodity involved (although many datasets needed to achieve this, such as trade and shipping data, are common), but we are unclear how this would affect the requirement to 'tailor' the legislation as standard protocols for assessment could be developed which are commodity agnostic and/or require minimal adjustment.

Step 2 is (with very few exceptions e.g. sugarcane is historically not allowed in the Amazon) agnostic of the commodity itself, and assessment would need to take place across production landscapes which may be associated with multiple commodity-production systems. Again, therefore, we are unsure of why 'tailoring' of the legislation to each commodity is expected.

We believe therefore that, 'Speed of implementation' thus primarily relates to the additional volume of information required to demonstrate compliance with multiple commodities. Businesses handling multiple commodities would therefore need to invest more resources, but we don't believe that this would be a barrier to timely implementation. To the contrary, an upfront investment now to address the requirements of achieving compliance for all high forest-risk commodities would represent a significant economy of scale in the long-term.

Additionally, the consultation documents suggest 18-24 months for implementation for two commodities, but an additional 18-24 months for the implementation of a further two commodities. It seems highly unlikely - if not inconceivable - that inclusion of one to two additional commodities would require the same implementation-period as the initial two, given efficiencies in the process (including investments in common information systems that are required for any commodity) that would be achieved in any 'first round'.

Furthermore, we consider the stated benefit of 'ability to learn lessons' is unsubstantiated in this context. The longer legislation is delayed, the more deforestation is likely to occur, the fewer experiences there will be of implementation in practice. Adopting regulation across multiple commodities, and undertaking monitoring, evaluation and learning across the commodity landscape as a whole, will be a much more informative process for policy improvement (and will increase levels of transparency; allowing more effective ongoing risk assessment) than delaying implementation in the hope that lessons will be learnt from a selected group of commodities.

Finally, as above, land use dynamics are complex, and variable by production region. Maize-soy-beef complexes in Latin America are more effectively tackled by a holistic - systems - approach than an isolated focus on single-commodity solutions.

With this in mind, our recommendation is for a substantially expedited version of Option 3 to be actively pursued if the objectives of the legislation are to be met. This should not be on a timeframe of four-to-five years, but should be adopted on a much faster timeframe, even if certain aspects of the regulation (e.g. penalties) require longer to fully enforce. If Defra is able to provide concrete evidence that a more tailored commodity-specific approach to inclusion of commodities requires longer timeframes, then on balance, however, it is important to get started as quickly as possible with as many commodities as possible. Even here, however, it would seem that as a MINIMUM, soy, palm and beef should be included in the first round given their overall importance to the estimated UK footprint. However, coffee and cocoa in particular would also be important commodities to bring into scope, given their rankings in the UK's deforestation footprint and - for example - the important role the UK plays in the trade and processing of these higher-value commodities.

Turnover definition

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

Yes

Regulating UK based businesses that have operations in the UK

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

No. Global turnover should be used as a metric to capture companies in scope. The main arguments for including a financial turnover threshold at all is that these companies are likely to be handling the bulk of the UK-linked material and that they will have the resources to respond effectively to the regulation. Global incorporated companies with turnover which would qualify them as 'large' businesses would have the financial resources available to respond to the regulation. These companies may well also be associated with UK subsidiaries with low UK turnover but handling significant volumes of material in the UK, given the way financial transactions take place linked e.g. to commodity trade. If the objective is to robustly include a significant portion of the UK supply chain, then global turnover should be used. This will also encourage a more uniform implementation of comparable measures across other consumer markets, ultimately lowering the business costs and improving the on-the-ground impact of any UK measures.

Regulating non-UK based businesses that have operations in the UK

Question 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? Please state your reasons.

For the purposes of this question, we are asking about businesses whose headquarters are not in the UK, but which have commercial activities in the UK. This could be either without a UK-registered business, or through a small or medium sized UK-registered business.

- option 1: turnover related to UK activity
- option 2: global turnover
- other (please specify)

Option 2

Following the same logic as the previous response, Option 2 is the most appropriate/robust solution. However, Defra might also consider whether or not it is feasible to include ANY foreign company placing material on the UK in the scope of the legislation. If they are not a UK-based company then concerns about disproportionate impacts to UK small businesses does not apply, and this would robustly ensure that any company wishing to place materials on the UK market is in compliance with the objectives of the regulation.

Question 31. Can you provide any data or information that will help identify potential businesses in scope based outside the UK? Please provide details for your answer.

No

Turnover threshold level

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

- policy impact
- burden on business
- deliverability
- other (please specify)

Other

We don't believe that any large company has sufficient justification to be excluded from the regulatory requirements, i.e. any large company (>£36m) should be in a position to conduct due diligence, particularly if costs are in line with those obtained for Defra's cost/benefit analysis. Ultimately, the more companies that are included in the regulation, the more impact the regulation will have, given that turnover is anyway likely to be an imperfect proxy for the volume of material being handled.

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

For each commodity options are:

- £50 million
- £100 million
- £200 million
- Do not know

£50 million for all (but see comment below)

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

We recommend a £36m threshold in accordance with the definition of large business set out in the primary legislation. It is appropriate to include as many companies as possible, and there is an imperfect relationship between turnover and the mass handled by companies with different turnovers (given the variety of business models associated with commodity handling, processing or sale).

According to the impact assessment, setting a £100m threshold would exclude, in comparison to the £50m threshold, approx 40% of large businesses who may be handling commodities in scope. Setting a £200m threshold would exclude approx 60%. These percentage drop-offs appear broadly similar across all commodities assessed. No assessment was made of the number of companies that might fall in the £36m-£50m bracket, but this is likely to also be a significant number. We are aware that 'Earthsight' have conducted analysis across financial turnover and total import volumes that suggests that several important traders may be excluded from the regulation unless as low a threshold as possible is adopted.

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

No.

Any exemption thresholds should be conducted on the basis of risk assessment; different products are associated with different risks of deforestation per unit production (including via different yields - e.g. soy ~3 tonnes/ha vs maize ~7 tonnes/hectare), which may also vary widely by sourcing location. Sourcing regions will be particularly important in determining the overall levels of deforestation associated with production and the relative impact of each unit of deforestation for the conservation status of the ecosystem or biome in question. As a result, a more adequate threshold-setting mechanism should involve assessment of the source region in addition to the commodity-specific volume handled. The importance, however, of more informed threshold setting (i.e. that based on sourcing location) depends also on the tonnes postulated for the threshold; if these are high then regionally-specific information becomes more important than if they are low.

Question 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? Please state your reasons.

Yes

If thresholds are to be adopted, then conversion factors represent possibly the only reasonable way to assess volumes used. The alternative would require assessment steps in the supply chain (which would undermine the rationale for the thresholds).

Given uncertainty in conversion factors, a precautionary approach should be adopted, however, to avoid the use of unrealistically low conversions and therefore underestimates of exposure.

Question 37. Should we use the proposed approach for businesses to understand whether they could be exempt? Please state your reasons.

No.

The proposal is for the business to have flexibility to adopt their own method, and that this will be assessed as to whether or not it is 'reasonable'. The suitability of this approach is therefore wholly dependent on the authority's capacity to assess whether the method is 'reasonable' which is likely to require specific technical expertise and resourcing, and is potentially open to challenge. Furthermore, it does not provide a level playing field for companies in potential scope of the regulation. A simpler, and likely more robust, approach is to specify the conversion factors and methodological steps that should be adopted if a company wishes to claim exemption from the regulation.

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

- policy impact
- burden on business
- deliverability
- other (please specify)

Other

None of these factors appear particularly important when determining a tonne-based threshold that might exempt large companies from the regulation. For policy impact, companies handling materials at a relatively high volume across many product lines may have less influence than a company handling lower volumes in a single line. The burden on business will also depend on the distribution of the supply chain and not the overall volume. Likewise, the 'deliverability' of the policy is likely associated more with the robustness and efficiency of the processes which would apply to all companies in scope, rather than specific numbers. Having fewer companies in scope risks undermining the stated purpose of the policy to reduce deforestation linked to UK supply, and to production landscapes in general.

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

For each commodity options are:

- 1 tonne
- 10 tonnes
- 100 tonnes
- 1000 tonnes
- Do not know

Do not know

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

As stated above, the level of risk will be determined by a combination of volume handled and origin. Whilst it is possible to roughly estimate how much production per year can result from 1 hectare of deforestation (e.g. ~3 tonnes of soy, ~7 tonnes of maize, 225kg of beef based on indicative numbers from Trase), determining commodity-specific thresholds is highly subjective without taking the deforestation rates in places of origin into account. Furthermore, if the legislation was to expand to a broader set of commodities in future (e.g. mineral products) providing robust and comparable thresholds for inclusion/exclusion will likely only become more and more problematic and administratively burdensome.

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

No

Questions 42-44 are for businesses only

Risk mitigation level

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

Yes

Additionally, the guidance provided to companies on what is 'reasonable' should be reviewed regularly and based on an assessment of best practice across relevant sectors and changing conversion dynamics on the ground. It would be reasonable also for risk mitigation to reflect particular characteristics of company supply chains, such as the overall volume handled, the particular sourcing patterns involved and the position of the actor in the supply chain. Assessment of risk associated with indirect supply chains should be in the scope of what is 'reasonable' but given potential complexities involved in this aspect of risk assessment it is reasonable to expect iterative improvement over time, and companies should be strongly incentivised to bring both direct and indirect components of their supply chain into the scope of 'reasonable' assessments. Furthermore, review and revision of what is 'reasonable' for companies should inform any future changes to the legislation, including - for example - reducing any thresholds adopted in its first iteration and/or increasing commodity coverage.

Question 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 and state your reasons.

- 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 (please specify)

All of the above.

Also - platforms/multi-stakeholder partnerships via which they can engage to improve best practice e.g. UK Roundtables, UK Soy Manifesto, CGF Forest Positive Coalition.

Also - advice on how UK regulation and processes may interact with legislation in other countries introducing due diligence (e.g. EU).

Certification schemes and standards

This refers to certification schemes such as Fair Trade or other schemes potentially appropriate for demonstrating compliance.

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

Yes. Businesses will require careful guidance in the selection of appropriate standards to ensure consistency against compliance requirements.

Question 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 and state your reasons.

- proof of legality
- chain of custody
- robustness
- transparency
- other (please specify)

All of the above

Depending on the certification model in question, it could be viable to use certification as a mechanism to demonstrate compliance. It is likely, however, that the only model that could guarantee compliance with legality would be based on a segregated, Identity Preserved (IP) system. Mass-balance would not likely provide legality-based assurances unless accompanied by additional traceability information showing that any "mix" is coming from equally low risk regions. It cannot, as has been suggested, assure the legality of a portion of material with the other portion needing additional due diligence. For example, bulk shipments of grains may comprise 70% certified and 30% uncertified material. The only way of determining the legality of any of the uncertified 30% material would be to conduct traceability assessment of 100% of the material's origin, due to the bulking processes involved. This would negate the utility of mass-balance certification in demonstrating compliance. Regionalised credit-based certification schemes, as well as clean supplier certification systems, may provide some

assurance, if it can be demonstrated that any and all material from the region/supplier is produced in compliance with the law, but without such assurances such schemes are also likely problematic.

Further evidence to inform due diligence system requirements

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

In particular, we are interested in further evidence on:

- what indicators or metrics can be used to help assess the risk of illegal land use and ownership at the national and sub-national level
- what methods are in use or development to help assess whether commodities have been produced on land legally owned and used, including any challenges associated with particular methods
- what resources are currently available to help understand legal frameworks in producer countries
- how long would it take to shift to legally assured supply chains for the commodities and derivatives you use

Defra is already aware of the UK indicator work and Trase platform that provide effective mechanisms for conducting risk assessments across scales. It is recommended also that Defra follows developments in new and existing initiatives such as the Accountability Framework Initiative - especially, Consumer Goods Forum Forest Positive Coalition, Soft Commodities Forum, and UK Soy Manifesto, that are all at various stages of developing monitoring, reporting and verification systems for deforestation-risk commodities.

The Trase team is developing a 'relative risk threshold' based methodology for assessing sub-national locations of high deforestation risk in general (not just illegal deforestation). This has been initiated in conversations/collaboration with AFi, CGF, SCF, ProForest, the UK Soy Manifesto and French SNDI platform. We would be happy to share approaches and look at further improvements with Defra at an appropriate juncture.

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

No

Question 51. Can you provide any evidence on the cost of carrying out due diligence for specific commodities? Please provide details about your answer.

The cost of due diligence is likely to vary according to the 'directness' of the supply chain. Analysis by Trase suggests that a large portion of the supply chains of many commodities is made up of [indirect sourcing](#) whereby e.g. traders have incomplete traceability. Traders assessed in this analysis frequently source 40% or more (sometimes all) material indirectly via local intermediaries. This is a significant blind spot that will require some financial investment to overcome.

Additionally, some data environments are inherently poorer than others, collection of information linked to supply chains in certain regions (e.g. smallholder production systems in Africa or South East Asia) is likely to be more challenging than where supply chains are dominated by industrial farming (e.g. Brazil).

If certification can be adopted as an effective mechanism to ensure legality, then this would reduce costs associated with traceability.

Question 52. Can you provide any evidence on the benefits to businesses of conducting due diligence for specific commodities? Please provide details about your answer.

[Analysis by SEI](#) for the UKRI Global Food Security (GFS) programme identifies deforestation-risk supply chains as a key concern for the UK supply chain, given the significant reputational pressures involved. As a result, companies have called for UK policy to extend beyond legality (something that in [our response to primary legislation](#), SEI also supported. This is indicative of the clear incentive and reputational benefits for companies in the UK to respond to the incoming regulation. Indeed, several companies commit to action above and beyond the requirements of the UK legislation, further demonstrating the benefits involved, and justifying rapid movement by the UK Government to further strengthen the legislation in the near future. Deloitte produces a regular survey on reputation, which suggests that CEOs rank reputational risk among the top risks to their businesses. Weber Shandwick produced a [report in 2020](#) that concluded that, on average, business reputation could account for more than 60% of the market valuation of a company.

Question 53. If you answered Question 52, can these benefits be quantified? Please provide details about your answer.

No response

Question 54. Can you provide any evidence on the costs to consumers of businesses conducting due diligence? Please provide details about your answer.

Analysis in the [GFS brief](#) suggested that costs associated with impacts to the soy supply chain (e.g. changes in prices) would be likely to be absorbed initially within the supply chain, given the competitive nature of UK retail. This analysis focused on short term shocks, and it is perhaps reasonable to expect some costs to be passed to consumers in the longer term, although this would ultimately represent a relatively small/marginal increase in the total product cost. Given that several retailers have already voluntarily attempted to conduct risk assessments/due diligence on supply chains (e.g. via the Retail Soy Group) evidence should be available to inform the potential costs involved.

Annual reporting

It is envisioned that an annual report by the regulatory authority will be published. The specifics of what information should be included in this report and be made publicly available are asked for in this section of the consultation.

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

It will be important to ensure that reporting requirements are aligned with best practice defined via other mechanisms (e.g AFi and UK Soy Manifesto systems, to name two). In particular, the AFi's [Common Methodology for Assessment of Progress Towards Deforestation-Free Supply Chains](#) represents an important guidance document for reporting, with which alignment should be sought to ensure the scale-up of best-practice on disclosure and monitoring.

Overall though, to demonstrate compliance with the regulation, companies should be required to report on:

- *The HS (or other, equivalent, standardised) code of the commodity being imported into the UK;*
- *The volumes of commodities-in-scope utilised;*
- *The nature (i.e. a description) of environmental legislation in source regions, and evidence that sourcing is conducted in compliance with these laws, including the origin of commodities to the finest resolution possible/necessary to demonstrate compliance;*
- *Evidence that volume/origin information has been robustly assessed (e.g. via chain of custody reports, bills of lading, etc)*
- *The nature of their material use (e.g. direct/indirect sourcing, material embedded in product lines etc);*
- *Quantification of the portion of material use which cannot be identified to source and therefore verified as legal. In the absence of full traceability, as much information on the sources of production as possible should be provided, to assist with determining likely levels of risk and/or the prevalence of indirect supply in sourcing patterns;*
- *Any methods/assumptions used to determine quantities, origin and/or risk of illegality.*
- *Steps being taken to reduce uncertainty in assessments;*
- *Any high-risk supply chains identified and mitigation measures in place;*
- *Any certification used to demonstrate compliance.*

In addition, companies should be strongly encouraged to report on:

- *The presence of and/or steps to mitigate any risk of legal deforestation in their supply chains;*
- *The dynamics of territorial deforestation linked to their source regions, whether or not linked to agricultural commodity production;*
- *Steps being taken to support deforestation-free landscapes from which they are sourcing.*

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

Yes

A stated broader objective of the legislation is to promote deforestation-free supply chains and deforestation-free production landscapes. Public disclosure of practice is likely an effective

mechanism to share knowledge and promote a 'race to the top'. It will also allow third-party scrutiny and assessment of the effectiveness of the legislation, including by the NGO/research community that will support monitoring and evaluation, and potential future improvements or adjustments to policy to increase its effectiveness. Moreover, public disclosure would allow scrutiny around the efficacy of a legality-based mechanism in reducing overall deforestation rates, and assessment of leakage or displacement effects which might undermine policy aims.

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

All information listed under Q55 should be disclosed publicly, although some aspects related to evidence of 'origin' may be out of scope due to potential contractual sensitivities.

Designating an enforcement authority

Question 58. Which criteria should the enforcement authority fulfil? Please tick all that apply and state your reasons.

- UK-wide remit
- capacity to regulate
- capability and experience to deliver
- other (please specify)

All of above

Overview of enforcement regime

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

- Yes
- No
- Do not know

Do not know

Many companies involved in the UK supply chain will have very high financial turnover and handle large volumes of commodities-in-scope. £250,000 is likely to be a large penalty for many businesses, but a relatively small one in the context of a hypothetical major multinational who has been found to be in severe breach of the regulation. Adopting a maximum penalty based on the percentage of total annual turnover may therefore represent a more robust mechanism for determining a cap. The justification for the £250,000 cap appears to be linked to the Ivory Act, but the context of the ivory trade is rather different from the context of major agricultural commodities, and therefore it would be useful to see further justification for why £250,000 is deemed a reasonable cap.

As stated above, a clear benefit to companies in regulatory compliance is the mitigation of reputational risk which is deemed of major importance to UK companies. With this in mind, a particularly effective way to encourage and reward compliance could be to publicly disclose instances where companies are found to be in breach of the regulation, including the nature and size of any fines imposed.