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Sustainability in Supply Chains: New Regulations on Forest Risk Commodities

Commodities such as beef, leather, palm oil, cocoa and soy have been identified as some of the key drivers of deforestation, accounting for an estimated 64% of the UK's tropical deforestation footprint. WWF estimates that between 2016 and 2018 around 88% of the UK's land area was required overseas each year to satisfy the UK's demand for these products¹. In order to address these issues, the Secretary of State for Environment, Food and Rural Affairs has announced the UK's intention to ban the import of commodities linked to deforested land.

This legislation follows similar EU Regulation 2023/1115 but is narrower in scope and indicates a step away from voluntary approaches to sustainable commodity sourcing, with the government taking more direct action to help retailers meet deforestation targets and improve supply chain accountability.

In-scope businesses should be aware of the increased requirements for sustainability and transparency in supply-chains and how conformity with the new regulations may impact their business.

Existing legislation

In 2021 the UK Government introduced the Environment Act 2021 to address issues of illegal deforestation in supply chains. Schedule 17 of the

Environment Act 2021 outlines the following core requirements for in-scope regulated businesses:

1. They are prohibited from using produced forest risk commodities, including both raw and derived products in their UK commercial activities unless relevant local laws were complied with in relation to that commodity². The local laws that apply are the laws of the country or territory where the source organism was grown, raised or cultivated;
2. They must establish and implement a due diligence system for each regulated commodity that they use in UK commercial activities³. This system must (i) identify and obtain information about the commodity, (ii) assess the risk that the local laws were not complied with in relation to that commodity, and (iii) mitigate that risk⁴; and
3. They must report annually on the actions taken to establish and implement a due diligence system.⁵ Parts of these reports will be published to improve transparency.

New requirements introduced under the Forest Risk Commodities Scheme

To operationalise these requirements, and to deliver on promises made at COP26 to 'halt and reverse deforestation by 2030'⁶, the UK government recently proposed secondary legislation to cover the specific regulations for key forest risk commodities, which will be introduced through provisions in Schedule 17 of the Environment Act 2021. In December of last year, the Secretary of State for Environment, Food

¹ WWF Report '*Riskier Business: The UK's Overseas Land Footprint*' July 2020.

² Schedule 17, Article 2(1), Environment Act 2021

³ Schedule 17, Article 3(1), Environment Act 2021

⁴ Schedule 17, Article 3(2), Environment Act 2021

⁵ Schedule 17, Article 4(1), Environment Act 2021

⁶ [Written statements - Written questions, answers and statements - UK Parliament](#)

and Rural Affairs provided a statement listing the commodities in scope as⁷:

- non-dairy cattle products (beef and leather);
- cocoa;
- palm oil; and
- soy.

Businesses with a global turnover of £50 million or more and whose annual use of the regulated commodities exceeds 500 tonnes will be banned from importing these products (and the goods derived from them) if they are produced on land connected with illegal deforestation. They will have to source the regulated commodities from parties that can prove the goods were produced on land that has not been linked to illegal deforestation. Companies that use less than 500 tonnes per annum of the in-scope commodities may submit an exemption to the regulations⁸.

The regulatory intention is to work 'in partnership with producer countries to strengthen forest governance', protecting forests at risk of illegal clearance through a bottom-up approach from producers to national government⁹. This will in turn enable consumers to access greater supplies of 'deforestation-free products'. Out-of-scope businesses might also be encouraged to improve their own supply chain accountability to remain competitive.

Exclusions

Unlike the comparable EU Regulation 2023/1115, the published list of regulated commodities does not include coffee or rubber products. Regulation (EU) 2023/1115 obliges companies to ensure that coffee, rubber and wood (in addition to those commodities included in the UK regulations) sold in the EU and exported from the EU have not led to deforestation and forest degradation¹⁰. This means the scope of the EU regulation is wider, not only because it covers additional commodities, but also because the EU's definition of deforestation is wider as it does not take into account whether the deforestation is legal or illegal in the eyes of the originating country.

The Forest Risk Commodities Scheme does not cover wood as the use of illegally harvested timber in supply chains is regulated separately through the UK Timber Regulations¹¹.

Additionally, the new regulations will not specifically cover the financial sector. However, the most recent iteration of the Financial Services and Markets Act stipulated that the Treasury would undertake a review with the intention to eliminate the financing of prohibited forest-risk commodities¹².

Enforcement

The regulations will provide an array of civil sanctions as penalty for breaches and contraventions. There will be an unlimited monetary penalty (known as Unlimited Variable Monetary Penalties) to deter in-scope businesses from using forest risk commodities. Sanctions such as stop notices and enforcement proceedings will also likely be options for regulators. Guidelines for issuing these sanctions will be published in the future.

Considerations

These new regulations will require substantial due diligence and certification requirements at every stage of the supply chain. As well as their annual reporting requirements, in scope businesses will have to consider contractual mechanisms to address the new regulations and how these may affect their rights and obligations under contract. Businesses should consider the following:

- **Certificate of origin requirements:** including certificate of origin requirements in contracts, so that it is clear that in-scope commodities have been produced on land that is not linked to illegal deforestation.
- **Price adjustment clauses:** including price adjustment clauses in contracts which allow for price adjustment where the cost to the seller has gone up because of a change in the local law in relation to illegal deforestation.
- **Force Majeure provisions:** if at a point after contracting it turns out that the commodity has in fact been produced on land that is linked to illegal deforestation, parties should consider whether this can be deemed as an event of force majeure.
- **Termination provisions:** including the right to terminate the contract for illegality if the certification requirements have not been adhered to under the contract.

⁷ [Written statements - Written questions, answers and statements - UK Parliament](#)

⁸ [Written statements - Written questions, answers and statements - UK Parliament](#)

⁹ [Written statements - Written questions, answers and statements - UK Parliament](#)

¹⁰ Annex 1 of Regulation (EU) 2023/1115

¹¹ The Timber and Timber Products (Placing on the Market) Regulations 2013

¹² Financial Services and Markets Act 2023, Article 79(1).

Contact us

We hope that you find this update both useful and interesting. If you have any comments or would like to learn more about this topic, please get in touch with either your usual SH contact or any member of our commodities team by clicking [here](#).

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