



Department  
for Environment  
Food & Rural Affairs

# Implementing due diligence on forest risk commodities

## Consultation document

December 2021



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# Introduction

## Background

1. Recognising the impact on the world's forests of consumption in the UK, in 2019 UK Government asked an independent Taskforce - the Global Resource Initiative (GRI) – to provide the UK Government with specific recommendations on addressing the problem. The GRI submitted its first report in March 2020<sup>1</sup>. It recommended the UK Government introduce a mandatory due diligence requirement on companies using 'forest risk commodities' – commodities whose production is associated with wide-scale deforestation – in their supply chains.
2. Following consultation in August 2020 and building on recommendations from the GRI, the UK Government introduced world-leading legislation through the Environment Act to tackle illegal deforestation in UK supply chains. This is one part of a wider package of measures to improve the sustainability of our supply chains and will contribute to global efforts to protect forests and other ecosystems.
3. The Environment Act provisions will make it illegal for larger businesses operating in the UK to use key forest risk commodities produced on land illegally occupied or used. The UK Timber Regulations already prohibit the placing on the market of illegally harvested timber or timber products. To avoid overlapping with this regime, these products are therefore not in scope of these new provisions.
4. Businesses in scope will also be required to undertake a due diligence exercise on their supply chains, to assess and mitigate the risk of regulated commodities having been produced on land illegally owned and used, and to report on this exercise annually. To ensure transparency, information about businesses' due diligence exercises will be published. Businesses in scope that do not comply with these requirements may be subject to fines and other civil sanctions.
5. This law will help us to ensure there is no place on our supermarket shelves for commodities that have been grown on land illegally occupied or used and to support other countries to strengthen and enforce their forest protection measures.
6. After implementation of the regulations, the UK Government is required under the Environment Act to review the impact of the legislation every two years. This will enable us to ensure that the legislation is delivering as intended and make changes if we do not see action.

## How and why are we consulting?

7. Secondary legislation is required to implement the due diligence requirements set out in the Environment Act. To complement this, we will also publish guidance to

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<sup>1</sup> 6 Global Resource Initiative. (2020), [Final Report](#)

businesses on how to comply with regulations. In particular, the secondary legislation (supported by accompanying guidance) will specify:

- which commodities will be in scope of regulations
  - which businesses will be subject to provisions
  - what businesses in scope will be required to undertake and report on regarding their due diligence exercise; and
  - how the requirements will be enforced
8. This consultation seeks views on these key areas ahead of secondary legislation and guidance. We are also interested in collating evidence to help us design our measures to be proportionate and maximise impact: targeting those businesses with the most influence over a commodity's supply chain while minimising burdens placed on business.
  9. As we have the flexibility to introduce commodities through different rounds of secondary legislation, this consultation focuses on identifying which commodities should be prioritised for introduction in initial legislation.
  10. The issues addressed in this consultation are reserved to the UK Government in Scotland and Wales but are transferred (devolved) in Northern Ireland. However, the Northern Ireland Assembly has given its consent to certain powers in the Act being exercised by the Secretary of State on their behalf, allowing the provisions to be implemented on a UK-wide basis. As such, the consultation covers the whole of the UK.

## Responding to the consultation

11. Please submit your consultation response using the online survey provided on Citizen Space (Citizen Space is an online consultation tool). Alternatively, please email your response to [Due.Diligence@defra.gov.uk](mailto:Due.Diligence@defra.gov.uk), or post your response to the Department for Environment, Food and Rural Affairs (Defra):

Consultation Coordinator at Defra,  
2nd Floor, Foss House,  
Kings Pool, 1 to 2 Peasholme Green,  
York,  
YO1 7PX

12. Responses should be received by 11:59pm on 11 March 2022. This consultation will run for 14 weeks.

## Confidentiality and data protection

13. A summary of responses to this consultation will be published on GOV.UK. An annex to the consultation summary will list all organisations that responded but will not include personal names, addresses or other contact details.

14. Defra may publish the content of your response to this consultation to make it available to the public without your personal name and private contact details (for example, home address, email address).
15. If you click on 'Yes' in response to the question asking if you would like anything in your response to be kept confidential, you are asked to state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality.
16. The reason for this is that information in responses to this consultation may be released to the public in accordance with the Environmental Information Regulations 2004 (EIRs) or the Freedom of Information Act 2000 (FOIA), to which we are subject to.
17. In view of this, your explanation of your reasons for requesting confidentiality for all or part of your response would help us balance these obligations for disclosure against any obligation of confidentiality.
18. If we receive a request for the information that you have provided in your response to this consultation, we will take full account of your reasons for requesting confidentiality of your response, but we cannot guarantee that confidentiality can be maintained in all circumstances.
19. If you click on 'No' in response to the question asking if you would like anything in your response to be kept confidential, we will be able to release the content of your response to the public, but we will not make your personal name and private contact details publicly available.
20. Defra may share your response with the Devolved Administrations (the Northern Ireland Executive, Scottish Government, and Welsh Government) if it is of relevance to the areas governed by those Administrations.
21. There may be occasions when Defra will share the information you provide in response to the consultation, including any personal data with external analysts. This is for the purposes of consultation response analysis and provision of a report of the summary of responses only.
22. This consultation is being conducted in line with the [Cabinet Office "Consultation Principles"](#) .
23. Please find our latest privacy notice uploaded as a related document alongside our consultation document.
24. If you have any comments or complaints about the consultation process, please address them to:
  - Due diligence on forest risk commodities
  - Consultation Coordinator, Defra
  - 2nd Floor, Foss House, Kings Pool,
  - 1 to 2 Peasholme Green
  - York
  - YO1 7PX
25. Or email: [consultation.coordinator@defra.gov.uk](mailto:consultation.coordinator@defra.gov.uk)

## About you

Question 1. What is your full name?

Question 2. What is your email address?

Question 3. What country are you based in?

Question 4. Would you like your response to be treated as confidential? If yes, please state why.

- Yes
- No

Question 5. Are you responding:

- on behalf of an organisation
- as an individual

## About your organisation

Please note the following two questions only apply if responding on behalf of an organisation; if Question 5 in 'About you' = on behalf of an organisation. If you are responding as an individual, please go to Question 21.

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

For the purposes of this question, the turnover thresholds for defining small, medium, and large businesses are those in the Companies Act.

- a government body
- non-governmental organisation
- small or micro business (annual turnover is less than £10.2 million)
- medium business (annual turnover is no more than £36 million)
- large business (annual turnover is greater than £36 million)
- industry association
- responding on behalf of another type of organisation

Question 7. Please provide your organisation's name.



## About your business

Please note this section is for business respondents only; if Question 6 in 'About your organisation' = small or micro business, medium business, or large business

Question 8. Which sector best describes your business?

- agriculture, forestry, and fishing
- mining, quarrying and utilities
- manufacturing
- construction
- wholesale and retail; repair of motor vehicles
- transport and storage (including postal)
- accommodation and food services
- information and communication
- finance and insurance
- property
- professional, scientific, and technical
- business administration and support services
- public administration and defence
- education
- health
- arts, entertainment, recreation, and other services
- other

Question 9. Where is your business headquartered?

- in the UK
- overseas

Question 10. If your business is headquartered in the UK, please tell us where.

- England
- Northern Ireland
- Scotland
- Wales

Question 11. If your business is headquartered overseas, please tell us in which country.

Question 12. If your business is headquartered overseas, do you have commercial activities in the UK?

For the purposes of this question, 'commercial activity' is as defined in the due diligence measures in the Environment Act: (a) producing, manufacturing, and processing; (b) distributing, selling, or supplying; (c) purchasing for a purpose within (a) or (b), but not purchasing as a consumer.

- Yes
- No

Question 13. What parts of the UK does your business operate in? Please tick all that apply.

- England
- Northern Ireland
- Scotland
- Wales
- None of the above

Question 14. What is your business' annual turnover in the UK?

- £0 up to £10.2 million
- £10.2 million up to £36 million
- £36 million up to £50 million
- £50 million up to £100 million
- £100 million up to £200 million
- £200 million up to £500 million
- £500 million and above
- Do not know

Question 15. What is your business' annual global turnover?

(assuming \$1 USD = £0.77)

- £0 up to £100 million
- £100 million up to £500 million
- £500 million up to £1 billion
- £1 billion up to £10 billion
- £10 billion up to £50 billion
- £50 billion up to £100 billion
- £100 billion and above

Question 16. Does your business have a parent company?

- Yes
- No

Question 17. If your business has a parent company, please tell us where your parent company is headquartered.

Question 18. If your business has a parent company, please tell us the parent company's annual global turnover.

Please use British pound sterling (assuming \$1 USD = £0.77). If you do not know your parent company's turnover, please put 'Do not know'.

Question 19. Which of the following forest risk commodities do you use in your commercial activities in the UK? Please tick all that apply.

For the purposes of this question, 'commercial activity' is as defined in primary legislation: (a) producing, manufacturing, and processing; (b) distributing, selling, or supplying; (c) purchasing for a purpose within (a) or (b), but not purchasing as a consumer. Timber and timber products are out of scope of the due diligence regulations, as they are regulated under the UK Timber Regulations.

- beef
- cocoa
- coffee
- leather
- maize
- palm oil
- rubber
- soy
- none of the above

Question 20. Please list any other agricultural commodities associated with the conversion of forest which you use in your commercial activities in the UK.

For the purposes of this question, 'commercial activity' is as defined in primary legislation: (a) producing, manufacturing, and processing; (b) distributing, selling, or supplying; (c) purchasing for a purpose within (a) or (b), but not purchasing as a consumer.

## Implementing the due diligence requirements

26. Globally, recent research estimates that at least 69% of tropical deforestation for commercial agriculture between 2013 and 2019 was conducted in violation of national laws.<sup>2</sup> Forests play a vital role in the lives of people and the planet, including by regulating the water cycle, preventing soil erosion, absorbing carbon, and hosting around 80% of the world's biodiversity on land.<sup>3</sup> The UK Government is firmly committed to tackling the twin challenges of climate change and biodiversity loss, and reducing illegal deforestation linked to agriculture is central to both.
27. Responses to our public consultation in 2020 highlighted the need to take urgent action to tackle global deforestation. We therefore intend to lay initial secondary legislation at the earliest opportunity to capture some of the most significant drivers of deforestation, following consideration of responses to this second consultation.
28. Once secondary legislation is brought into force, businesses (whether in scope or as suppliers or service providers to businesses in scope) will have a period of time to prepare for regulation before the beginning of the first reporting period when regulated businesses become subject to the due diligence requirements.
29. This period will need to allow for businesses to implement a due diligence and reporting system. It may, for example, need to allow businesses to begin working with existing suppliers to improve transparency and accountability, find new suppliers, or diversify business.
30. We are consulting on what we should take into account to determine how long businesses need to prepare for regulation but propose a minimum 6-month period. We are interested in views on this from all relevant businesses, whether in scope or suppliers or service providers to businesses in scope.
31. We are planning awareness-raising measures about the requirements among relevant businesses, other stakeholders, and members of the public in advance of commencement of the regulation's first reporting period, including through the publication of guidance.

Question 21. Should we lay secondary legislation at the earliest opportunity?  
If you ticked no, please state why.

- Yes
- No

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<sup>2</sup> Forest Trends, 2021: [Illicit Harvest, Complicit Goods](#).

<sup>3</sup> Aerts R, and Honnay O, 2011: Forest restoration, biodiversity and ecosystem functioning

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

## Forest risk commodities

32. The Environment Act provisions have powers that enable the Secretary of State to specify the forest risk commodities which will be introduced under the regulations through secondary legislation.
33. The provisions define 'forest risk commodity' as a commodity that has been produced from a plant, animal, or other living organism and for the production of which the Secretary of State considers forest is being or may be converted to agricultural use.
34. The Environment Act provisions define 'forest' as an area of land of more than 0.5 hectares with a tree canopy cover of at least 10% (excluding trees planted for the purpose of producing timber or other commodities). This is in line with the Food and Agriculture Organisation's definition of forest and includes land that is wholly or partly submerged in water (whether temporarily or permanently).
35. When considering whether a commodity is or may be driving deforestation for the purposes of its production, and therefore whether it may be regulated under these provisions, the Secretary of State must use this definition of forest. However, once a specific commodity has been introduced under the regulations, due diligence requirements will apply to all regulated businesses using that commodity or products derived from it regardless of where it has been grown, whether in forest areas or other ecosystems (for example, savannahs).
36. The UK Timber Regulations already prohibit the placing on the market of illegally harvested timber or timber products. To avoid overlapping with this regime, these products are not in scope of the primary provisions on due diligence for forest risk commodities.
37. In this section, we first seek evidence to test which commodities are key drivers of deforestation and are therefore in scope of the Environment Act provisions. Second, we seek views and evidence to determine the order through which key forest risk commodities should be introduced under the regulations. Third, we seek views on the number of commodities we should regulate through the first round of secondary legislation.

## Identifying key commodities in scope

38. Using secondary legislation to bring commodities into scope of regulations allows us to take a phased approach to regulations. This offers the flexibility to prioritise commodities associated with the highest risk of deforestation, whilst retaining the opportunity to extend the range of commodities captured through secondary legislation. This enables us to accommodate changing patterns of deforestation to capture commodities which may become key drivers of deforestation in the future.

39. Scientific evidence highlights the role that a wide number of commodities have played and continue to play in driving deforestation and habitat conversion. However, a review of key sources identified widespread consensus on seven agricultural commodities responsible between them for driving the majority of recent and ongoing global deforestation<sup>4,5,6,7</sup>. Those commodities are cattle (beef and leather), cocoa, coffee, maize, palm oil, rubber, and soy.
40. Given the evidence that these seven commodities are also responsible for an estimated 65% of the annual tropical deforestation risk associated with UK supply chains<sup>8</sup>, we propose that they are considered for initial inclusion under the due diligence regulations.
41. We will consider any further evidence received on commodities that drive deforestation (both tropical and non-tropical) to test which commodities are considered in scope ahead of introducing regulations.

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

## Legislative sequencing

42. If we proceed with the seven key forest risk commodities listed above, we do not intend to include all seven under the regulations at once. We plan to adopt a phased approach so that we can move more swiftly with regulation to capture the most significant drivers of deforestation and learn lessons before expanding the scope to a larger number of commodities.
43. We propose considering the following factors to determine what order the key forest risk commodities identified should be included in legislation:
  - The commodity's impact on global deforestation, by looking for example at the estimated number of hectares of forest converted annually for the agricultural production of that commodity worldwide
  - The UK's role in this global deforestation through our consumption of key commodities
  - The ability to deliver effective regulation, which includes consideration of how due diligence provisions and processes can best help tackle illegal deforestation by being tailored to specific commodity supply chains. This may also include consideration of a commodity's wider context, for example a sector's readiness for regulation.

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<sup>4</sup>JNCC, 2021: [Towards indicators of the global environmental impacts of UK consumption](#)

<sup>5</sup> European Commission, 2013: [The impact of EU consumption on deforestation](#)

<sup>6</sup> World Resources Institute, 2020: [Estimating the role of seven commodities in agriculture-linked deforestation](#)

<sup>7</sup> WWF, 2020: [Riskier business: The UK's overseas land footprint](#)

<sup>8</sup> JNCC, 2021: [Towards indicators of the global environmental impacts of UK consumption](#)

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)

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

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

## First round of secondary legislation

44. Once we have determined the order in which we introduce key commodities, we need to decide how many to target in the first piece of secondary legislation.
45. There are a number of key considerations in deciding how many commodities are regulated in the first instance:

- 1. Speed of implementation**

The fewer commodities included in the first piece of secondary legislation, the quicker businesses could have due diligence systems in place and the quicker the requirements can start taking effect.

This is because the requirements can be tailored to the supply chains of each regulated commodity to be effective and because businesses may need additional time to tailor due diligence systems to each regulated commodity. Introducing fewer commodities would also enable more rapid development of robust enforcement infrastructure, as development will take longer for a broader set of commodities than for a narrower set of commodities. Without sufficient time to enable commodity-specific design, and establish an effective enforcement regime, the requirements may not achieve their intended impact.

- 2. Ability to learn lessons**

By introducing commodities in rounds, the process for the inclusion of commodities and the development of subsequent rounds of secondary legislation could be informed by evidence and experience from earlier rounds.

- 3. Strength of evidence on the relative impact of different commodities on deforestation**

Where commodities have a differential impact on deforestation, there is a stronger argument for tackling the higher impact commodities first.

#### 4. Overall impact in first 5 years

The more forest risk commodities included under the requirements, the more impact the legislation can have on illegal deforestation associated with UK supply chains.

On the one hand, regulating most or all of the seven key commodities in the first round could only come into effect in around 4 to 5 years, but would then have the most significant impact on illegal deforestation.

On the other hand, regulating a smaller number of commodities sooner would address less of the illegal deforestation associated with UK supply chains in the near term. It is also possible that by including key commodities through different rounds of secondary legislation, we could still regulate all seven commodities at the same point as if we tackled most or all of them together in one initial round of secondary legislation.

46. We have identified three options for the first round of secondary legislation:

##### **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.<sup>9</sup> 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.

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

- option 1
- option 2
- option 3

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<sup>9</sup> Once the secondary legislation has been brought into force, businesses in scope will have a period of time to prepare before the requirements come into effect. The duration of that period is subject to consultation, but we propose it is at least 6 months long.



## Businesses in scope

47. The Environment Act provisions are designed to have the greatest impact on addressing illegal deforestation while not placing an undue or disproportionate burden on business. As such, they will focus on larger businesses that have a greater influence on forest risk commodity supply chains, while minimising the regulatory burden on smaller businesses.
48. The framework in primary legislation sets out that to be in scope of the requirements, a business must:
  - exceed a specified turnover threshold, or have a parent company that exceeds the specified turnover threshold, and
  - use regulated forest risk commodities in their UK commercial activities
49. Secondary legislation will set the definition of ‘turnover’, as well as the threshold above which businesses will be in scope.
50. We intend to use accompanying guidance to help businesses understand whether they may be in scope of the requirements. For example, the definition of commercial activity is set out in primary legislation, and so we intend to provide a list of examples of what this covers in guidance.

## Turnover definition

51. We intend that the definition of ‘turnover’ is that of the Companies Act 2006 (Section 474)<sup>10</sup>. This aligns with other legislation and the definition used by businesses for their financial accounting reports.
52. We propose that businesses should be in scope of the requirements if they exceed the turnover threshold in the previous financial year. We believe this is the simplest and most effective way that enables businesses (and the regulator) to understand who is in scope of the requirements. It also aligns with the approach taken in reporting requirements under the Modern Slavery Act – where those reporting must meet the in-scope criteria in the previous financial year.

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

- Yes
- No
- Do not know

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<sup>10</sup> Companies Act definition: ‘turnover’ in relation to a company, means the amounts derived from the provisions of goods and services, after deduction of – (a) trade discounts, (b) value added tax, and (c) any other taxes based on the amounts so derived.

## Regulating UK based businesses that have operations in the UK

53. Primary legislation sets out that businesses in scope are those that use forest risk commodities in their commercial activities in the UK. This can be both UK based businesses and non-UK based businesses (those whose headquarters are not in the UK but who conduct commercial activities in the UK).
54. When setting the turnover threshold, we propose to use 'UK turnover' as the metric to regulate UK businesses. This means that for UK based businesses to be in scope of the requirements, their annual UK turnover would exceed a specified turnover threshold in British pound sterling.
55. An alternative approach would be to use a business' global turnover.

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

- Yes
- No
- Do not know

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

56. There may be cases where large businesses in commodity supply chains do not have their headquarters in the UK, but still carry out commercial activities in the UK. For example, they could be operating in the UK through a subsidiary (a company that they own or control) which may be a small or medium UK-registered business. Alternatively, they could have operations in the UK independent of any UK-registered business.
57. We want to ensure that where these large non-UK based businesses have operations in the UK, those operations are also subject to the due diligence requirements. However, we recognise there are challenges when it comes to effectively capturing these businesses given that they may not be registered in the UK or may not operate through a subsidiary registered in the UK.
58. There is therefore limited data available to understand which of these businesses would be in scope - they may not have a UK turnover and therefore cannot be identified as in scope in the same way that a business headquartered in the UK can be.
59. We are considering two potential routes for regulation of these non-UK based businesses that have commercial activities in the UK:

### **Option 1: turnover related to UK activity**

Non-UK based businesses would be in scope if they exceed a threshold related only to their UK based commercial activities, and not according to the scale of their global operations.

This threshold would therefore be set using a similar turnover metric to UK based businesses, while accommodating for the fact that non-UK based businesses may not have a UK turnover as reported on by businesses headquartered in the UK.

### **Option 2: global turnover**

Non-UK based businesses would be in scope if they exceed a threshold related to their overall global operations, as opposed to the turnover generated from their UK based activities.

For example, a non-UK based business that operates in the UK and multiple other countries would be in scope if its turnover across all the countries they operate in exceeds the specified threshold.

60. For both options, the level at which the threshold for inclusion is then set for non-UK based businesses could be the same level as the UK turnover threshold for UK based businesses, or different.
61. After establishing how to effectively capture non-UK based businesses, we will undertake further research to understand whether the turnover threshold level should be different to the one set for UK based businesses or not, and, if so, how.

**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)

**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.

## **Turnover threshold level**

62. To determine where the turnover threshold should be set for each commodity area, it is important to consider a number of factors. We propose that the following factors are relevant:
  - policy impact, for example which businesses will be best able to influence commodity supply chains to the UK and be a catalyst for change towards more transparent and accountable practices

- burden on business, for example the impact on business of implementing due diligence
- deliverability, for example how many businesses will be in scope and how easy is it to identify them to support effective regulation and enforcement

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)

63. Each commodity supply chain is different, and businesses involved in these supply chains vary in size. For example, businesses using significant amounts of Commodity A may typically have a 'very high' turnover, whereas businesses using significant amounts of Commodity B may typically have a 'moderately high' turnover.
64. We could therefore set the turnover threshold on a commodity-by-commodity basis. This will help ensure we can regulate those businesses that have the most influence over UK supply chains and can send a positive signal to producers, while minimising the regulatory burden on those that would have less of an impact on the supply chain.
65. Taking into account the factors listed above, we have undertaken provisional analysis of the turnovers of businesses operating in each key commodity supply chain, as well as initial stakeholder engagement of where the threshold for inclusion could sit.
66. As we want to design measures that are proportionate and maximise impact while minimising burden on businesses, we are seeking views on a range of options, between £50 and £200 million.
67. Further details of the analysis, including data on the number of businesses above each turnover threshold option, can be found in the consultation impact assessment, which has been published alongside this consultation document.
68. Following this consultation, we will take views into account, and draw on further research and engagement to determine the exact threshold for each forest risk commodity that is brought into scope of regulations.

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

For the purposes of this question, we are seeking views on beef (including dairy and other derived products) and leather separately, as opposed to 'cattle'. Whilst both are linked to cattle, the products and businesses operating in these supply chains are different, and so

we would like to gather views on both. Further data on the number of businesses captured by each turnover threshold is available in the consultation impact assessment.

Beef:

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

Cocoa:

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

Coffee:

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

Leather:

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

Maize:

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

Palm oil:

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

Rubber:

- £50 million
- £100 million
- £200 million

- Do not know

Soy:

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

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

## Exemption

69. Following feedback from the public consultation last year, we introduced a provision whereby businesses that fall in scope of the due diligence legislation can give notice to be exempted from requirements if the amount of a commodity they use in their UK commercial activities in a given year falls under an exemption threshold. This ensures we are not burdening businesses that may be large in size but use small amounts of a commodity in their supply chains.
70. Details related to the exemption will be set in secondary legislation – including the level at which the threshold is set.
71. Our approach needs to enable the identification and exemption from provisions of businesses that use low volumes of a commodity and provide the simplest way for a business to understand whether or not they are exempt from the requirements.

## Exemption threshold

72. Forest risk commodities are found in many different forms and products across supply chains, and businesses use them in different ways. In some cases, businesses use forest risk commodities in their raw, unprocessed form. In other cases, businesses use forest risk commodities that are embedded within other products, which we refer to as ‘derived products’. Examples of these could include products from livestock fed on a commodity such as soy or maize, or products like soap that contain commodities such as palm oil in their ingredients.
73. We propose setting a single exemption threshold for each regulated forest risk commodity that will combine the amount of raw commodity used with the amount of products derived from commodities into a cumulative total across a business’ UK commercial activity. This offers the simplest way for businesses to calculate whether or not they meet the exemption threshold whilst ensuring the policy applies to those who have the greatest impact on UK supply chains.
74. To determine if they were exempt or not, a business would add up both the raw and embedded commodity volumes they use in their UK commercial activities. If the total volume is under the exemption threshold, then the business could notify the regulator that they are exempt.

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

- Yes
- No

## Calculating volumes of commodities used

75. For businesses to understand whether they could be exempt from due diligence requirements, they will need to understand how much of a commodity is used in their UK commercial activities.
76. Given the complexity of supply chains and forest risk commodity products, many businesses do not know the exact volumes of a commodity included in the products or produce they use. For example, this could be the amount of soy embedded in a dairy product due to soy-based animal feed, or the quantity of palm oil in a cleaning product.
77. To address this gap, conversion factors have been developed to help businesses calculate the volumes of commodities they use in their supply chain. Taking the example of a dairy product where the cattle was fed on soy, if a business buys a certain tonnage of milk, conversion factors can estimate the amount of soy embedded in that milk.
78. Conversion factors come with a margin of error meaning that, in some cases, they may overestimate or underestimate the total amount of a commodity used by a business. However, they can provide a basis for a business to identify where commodities may be embedded in their supply chains, and in what volumes. This margin of error may also decrease where conversion factors become more tailored to the UK supply chain and production methods over time.
79. We propose that businesses should be able to use conversion factors to help understand whether they could be exempt from due diligence requirements.

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
- No

80. We propose giving businesses freedom to choose how they calculate the volumes of each regulated commodity that they use for the purposes of the exemption. Businesses would be able to choose whether to use conversion factors, examples of which we can recommend in guidance; verifiable data from their supply chains; or another methodology.
81. This approach is similar to that used in the Streamlined Energy and Carbon Reporting requirements. It offers flexibility to businesses to opt for the method that is least burdensome and/or most representative of their supply chain. It also

provides flexibility to update guidance with information on methodologies, including the most robust conversion factors, as they are further developed and tailored to UK supply chains.

82. This approach carries a level of risk by giving businesses scope to use conversion factors or methodologies that may be less robust than those recommended in the guidance. This may lead to an underestimation of commodity use. To mitigate this, we propose setting out in secondary legislation that the methodology businesses use to understand whether they could be exempt should be 'reasonable'. We would also require businesses to report in their exemption notice on the methodology they have used so that an assessment of this can be made.
83. If a business gives notice of exemption and the enforcement authority deems it is not a reasonable methodology, the enforcement authority may take action.

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

The proposed approach is to give businesses the freedom to choose which methodology they use to calculate volumes, to provide information on recommended methodologies in guidance, and to require in secondary legislation that the methodology should be reasonable.

- Yes
- No
- Do not know

## Exemption threshold level

84. As with the turnover threshold, in order to determine where the exemption threshold should be set, a number of factors will need to be considered.
85. We propose that the following factors are relevant for assessing exemption threshold options:
  - policy impact, for example which businesses will be best able to influence commodity supply chains and be a catalyst for change towards more transparent and accountable practices
  - burden on business, for example what the impact on business would be
  - deliverability, for example numbers of businesses in scope and assessing methodology to support effective regulation and enforcement

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)

86. We also have the ability to set the exemption threshold level on a commodity-by-commodity basis. This reflects the fact that businesses operating in each commodity supply chain also vary by the amount of each commodity they use.
87. There is limited data when it comes to understanding or calculating the breakdown of commodity volumes used by businesses in their supply chain. Therefore, through this consultation, we are gathering evidence to understand at which scale (for example, 10s, 100s, 1000s of tonnes) the exemption threshold should be set to. This will help us ensure we are regulating those businesses that use significant volumes of commodities and allowing those that use much smaller volumes to be exempt.
88. We are also gathering evidence through this consultation to understand the volumes of forest risk commodities used by businesses to build our evidence base. Following consultation, this will feed into further research and testing to understand where the exact threshold should be set for each commodity we will bring into scope.

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

For the purposes of this question, we are seeking views on beef and leather separately, as opposed to 'cattle'. Whilst both are linked to cattle, the supply chains are different, and so we would like to gather further evidence on both. You do not need to respond to this question for any or all commodities listed if you do not have a view or relevant information.

1 tonne equals 1000 kilograms

Beef:

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

Cocoa:

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

Coffee:

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

Leather:

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

Maize:

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

Palm oil:

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

Rubber:

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

Soy:

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

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

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

## Additional questions for business respondents

**Note: the following 3 questions are for business respondents only**

89. Through these questions, we are seeking to gather views and information from businesses on the volumes of commodities used in supply chains, and methodologies used to help calculate these commodity volumes.

Question 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?

If you do not know the volumes of the forest risk commodities you use in your UK commercial activities in a given year, please put 'do not know'.

- exact volumes
- estimated volumes
- do not know

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

Please provide exact or estimated volumes if known with units specified. For forest risk commodities where you do not know the volumes used, please put 'do not know'.

- beef (specify volume, do not know)
- cocoa (specify volume, do not know)
- coffee (specify volume, do not know)
- leather (specify volume, do not know)
- maize (specify volume, do not know)
- palm oil (specify volume, do not know)
- rubber (specify volume, do not know)
- soy (specify volume, do not know)

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

## Due diligence system

90. Environment Act provisions require that businesses in scope establish and implement a due diligence system in relation to any regulated commodity that they use in their UK commercial activities. The provisions specify that as part of this due diligence system, businesses in scope must:
  - identify, and obtain information about, regulated commodities
  - assess the risk that relevant local laws pertaining to land use and land ownership were not complied with in relation to those regulated commodities, and
  - mitigate that risk
91. The Environment Act provides the Secretary of State with the power to make further provisions through secondary legislation on the information that businesses should obtain about regulated commodities, the criteria they should use in assessing risk, and the ways they may mitigate risk.

## Risk mitigation level

92. Risk mitigation is a strategy to reduce the occurrence or effects of an undesirable outcome such as illegal deforestation.
93. In some circumstances there is a zero tolerance of an outcome, and no risk mitigation efforts should be spared to avoid it. In other cases, some occurrence of the undesirable outcome is accepted and therefore there is a lighter risk mitigation requirement. The risk of a particular undesirable outcome may also vary, for example through time or across different geographic regions.
94. Mitigation requirements may be higher where the risk of an undesired outcome occurring is also high. However, when the risk of that undesired outcome is low, the mitigation requirements may be lighter.
95. Specifying a risk mitigation level within the due diligence requirements would make clear how far businesses should go to prepare for and reduce the likelihood of forest risk commodities being produced on land illegally owned or used. We received feedback on this through the consultation on the primary provisions and additional stakeholder engagement. This feedback emphasised that setting the level to which business must mitigate risk in legislation is key to delivering policy impact and to ensuring that businesses understand expectations.
96. We propose setting that level of risk in secondary legislation. This would support policy impact and business compliance, while retaining flexibility to adjust the level of risk in future secondary legislation should this be required.
97. Where the risk mitigation level is set should allow for the introduction of any forest risk commodity and accommodate the complexity of some supply chains. This would ensure we can regulate the commodities which are most significantly driving deforestation, while providing businesses with flexibility to tailor their due diligence processes to their supply chains. This flexibility would allow businesses to use

resources efficiently to assess whether risks are high, medium, or low and address them accordingly since the risk mitigation level will accommodate for any commodity and its supply chain.

98. We propose requiring that businesses in scope 'eliminate risk or reduce risk to as low as reasonably practicable' the risk of using regulated commodities grown on land illegally used or occupied. This phrase provides flexibility, enabling us to introduce any forest risk commodity into scope, even if it is not currently feasible to mitigate risk to zero or very low levels.
99. It also ensures businesses in scope do not have to carry out overly burdensome or costly actions in order to eliminate risk, for example, carrying out isotopic testing for all regulated commodities. However, it still makes clear that where it is reasonably practicable for a business to eliminate risk, they are required to do so.
100. Because reasonableness is dependent on context, we understand that it may be difficult for both a regulator and businesses in scope to judge what is, or is not, reasonable in any given case. We therefore propose using guidance to set out expectations on reasonable steps, as well as up-to-date information on best practice. This would support businesses to comply with the requirements efficiently and enable a regulator to sanction anything lower than best practice where it is deemed reasonably practicable.
101. We expect that what is reasonably practicable will evolve over time. Expectations and best practice set out in guidance may be updated over time to reflect this.

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
- No

## Guidance on the due diligence system

102. We intend to use guidance to help businesses understand how to establish an effective due diligence system. This would include information on acceptable approaches for conducting due diligence, and best practice.
103. Guidance on the due diligence system would, for example, include information on metrics to help businesses determine whether there is a low, medium, or high risk of illegal land use and land ownership in a source country or sub-national region. This could include indicators on land use change, deforestation rates, and governance. This assessment could then help businesses to determine what mitigation systems to put in place.
104. In their annual report (see section below), businesses in scope will be required to provide information on how they have assessed and mitigated risk where the commodities they use have been sourced.

105. In guidance, we can also indicate resources that businesses may use to help them understand the relevant local laws<sup>11</sup> in place where regulated commodities are produced.
106. We expect that what is reasonably practicable for a business to do to assess and mitigate risk will evolve over time as traceability systems improve.
107. For instance, in the first year that the requirements become operational for a particular commodity, it may be reasonable for a business to have basic risk mitigation systems in place where it has identified a risk of illegal land use and ownership. However, over subsequent years, businesses may be expected to move towards more granular information on where a commodity is produced and to have more thorough risk mitigation systems in place as traceability systems improve. Science, technology, and existing schemes may also influence what is considered to be a reasonable level of risk mitigation.
108. We can use and update guidance to set out available methods to support compliance, such as certification schemes, contract clauses, active land use monitoring, and isotopic testing. The following section includes more detail on how we propose supporting businesses to use existing certification schemes and standards.

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)

## Certification schemes and standards

109. We committed to establish a pathway to recognise existing certification schemes and standards as tools to help meet the due diligence requirements, where these give evidence of legality, following consultation on the primary provisions. This pathway should support businesses to assess and make use of existing tools where they are relevant and sufficiently robust.

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<sup>11</sup> The due diligence provisions in the Environment Act define 'relevant local law', in relation to a forest risk commodity, as any law having effect in the country or territory where the source organism was grown, raised, or cultivated and which relates to the ownership of the land on which the source organism was grown, raised, or cultivated or to the use of that land. Additional categories of relevant local law related to land may be specified in future regulations made by the Secretary of State.

110. We propose setting out in guidance the framework that regulated businesses should use to assess which existing standards and certification schemes can be used as evidence of legality. This framework would enable businesses to use an existing scheme to gather information on commodities, assess the risk of illegality, and/or mitigate risk if they judge the scheme meets certain key criteria. It would do so without reducing the responsibility of a business over its supply chain.
111. We do not intend to authorise specific, named schemes under the due diligence legislation or accompanying guidance. Businesses would have the flexibility to use methods best suited to their supply chains, whilst maintaining the integrity of due diligence requirements by ensuring businesses use those that meet certain minimum quality criteria.
112. Relevant markets are experienced at working with criteria-based approaches and established third-party accreditation processes assess schemes already. Using a criteria-based framework set out in guidance should therefore not place unreasonable burdens on businesses in scope.
113. Where producer countries have established or may wish to establish national standards on sustainable production of commodities regulated under the UK due diligence provisions, we will continue to support and help strengthen those standards to deliver robust environmental outcomes while supporting local economies. As with any other standard or certification scheme, where a business in scope judges that a national standard meets the minimum quality criteria set out in guidance, it may use it to help meet relevant areas of its due diligence obligation.

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
- No
- Do not know

114. We would like to gather views on the criteria we should set out in guidance to help businesses assess whether existing certification schemes and standards are relevant and robust enough to help them meet the due diligence requirements. These criteria are proposed in table 1.

**Table 1:** Proposed criteria to help businesses assess existing certification schemes and standards

Proposed criteria	Description
Proof of legality	Schemes should have a component that specifically assesses and assures whether the certified commodity has been produced on land legally used and occupied.
Chain of custody <sup>12</sup>	Schemes should certify the specific commodities or derived products that the business in scope is using in their commercial activity in the UK.
Robustness	Schemes should be regularly and independently audited.
Transparency	Schemes should provide public information on their components, accreditation, auditing etc. They should also provide businesses with reasonable evidence or information on how information was gathered and assurance provided that a commodity or derived product has been legally produced.

115. Schemes may only offer partial assurance of a commodity’s legality depending on how they meet given criteria or what certification models they use.

116. For example, through a mass balance model, the legality of 70% of a commodity or derived product may be certified while the remaining 30% may not be. In this case, businesses may be able to use the certification scheme to help assess and assure the legality of the proportion of certified goods (the 70%) but would still need to carry out sufficient due diligence on the remaining, uncertified goods (the 30%).

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)

<sup>12</sup> A chain of custody is the chronological documentation or ‘paper trail’ that records the sequence of custody, transfer, sale etc. of a material such as a forest risk commodity, including physical or electronic evidence.



## Further evidence to inform due diligence system requirements

117. We would like to gather further evidence on current business practices and the metrics and methods available to assess and mitigate risk. This will help us to develop guidance to support compliance and inform the duration of the period provided for businesses to prepare for regulation.

118. 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

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

119. We would also like to gather evidence on the costs associated with carrying out due diligence activities relative to business size and commodity use.

120. In particular, we are interested in obtaining evidence on:

- how the cost of carrying out due diligence may differ between businesses with UK turnovers of over £50 million, £100 million, and £200 million
- any commodity-specific costs of carrying out due diligence, and how this varies by commodity and/or between derived products, given variations and complexity in supply chains
- the benefit to businesses of conducting due diligence, as well as evidence on any impacts on consumers related to businesses carrying out due diligence

121. Evidence on these is welcome from all relevant businesses, whether in scope or suppliers or service providers to businesses in scope.

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.

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

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.

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

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

## Annual reporting

122. Businesses in scope will have to report annually on their due diligence exercise so that a regulator can identify areas for further scrutiny and use resources efficiently to investigate possible cases of non-compliance. This due diligence report will be distinct from a business' corporate reporting under the Companies Act.
123. Information from this due diligence report will be made public to support further accountability and to inform decision making, for example by responsible consumers and financial service providers.
124. We would like to gather views on what businesses should report on and what information should be made public.
125. Business reports will need to feature information on the regulated commodities and derived products used, such as the volumes used, the dates of commercial transactions, and the geographic areas from which they are sourced. To help a regulator to identify areas for further scrutiny, reports may also need to include information on the sourcing risk assessment and what risk mitigation approaches have been used.
126. Other information pertinent to risk mitigation may include a business's land use footprint, which would represent the total area of land from which a commodity or derived product used may have been grown, raised, or cultivated. This would help to demonstrate the level of traceability a business has achieved.
127. Where a business only traces the commodities it uses to a national level, it may have a large land use footprint across which it would need to assess and mitigate risk. However, where a business traces commodities to a more granular level, for example to sub-national regions or to the farm-level, then it may have a smaller footprint across which to assess and mitigate risk.
128. Business reports could also include information on any land disputes, or details of any engagement with non-compliant suppliers or producers to address issues identified.
129. Businesses will also need to report on how they have carried out the due diligence exercise itself. This could include information on how risk was defined and assessed, what metrics were used to identify actions to mitigate risks by commodity and source country, and which mitigation tools were used across what volumes of regulated commodities.

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

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

- Yes
- No

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

## Enforcement

130. Effective enforcement of the due diligence regulations is fundamental to ensuring we deliver our policy objectives to address illegal deforestation in practice and to enforce the requirements of the prohibition, due diligence system, and reporting.

131. Provisions in the Environment Act provide a comprehensive framework for the Secretary of State to specify through secondary legislation a detailed enforcement regime. Certain aspects of the enforcement regime follow precedents set by other laws and common practices.

## Designating an enforcement authority

132. The Secretary of State has the ability to retain enforcement functions or confer those functions on a regulatory body or bodies (from now on they will be referred to together as 'enforcement authority'). Conferring those functions enables the enforcement authority to conduct relevant duties.

133. One or more enforcement authorities should have three main functions:

- monitor business compliance: for example, by analysing evidence provided through annual due diligence reports from businesses
- investigate compliance: for example, by gathering further evidence to identify whether a business has breached the requirements of prohibition, due diligence, and reporting
- impose sanctions when a breach has been identified to bring businesses in scope back into compliance with the legislation, using civil sanctions set out in the Environment Act

134. When determining what regulatory body or bodies may be best placed to regulate this legislation, and thus become the enforcement authority, we consider that the enforcement authority should fulfil the following criteria:

- UK-wide remit to ensure that the enforcement authority has powers to operate across the territory of application of the regulations.
- Capacity to regulate through established centres of expertise to deliver effective enforcement of the regulations.
- Capability and experience to deliver the functions of monitoring and investigating compliance and imposing civil sanctions when the requirements have been breached.

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)

## Overview of enforcement regime

135. In line with the framework set out in the Environment Act, secondary legislation will provide details on the following aspects of the enforcement regime:

- how the Secretary of State or the enforcement authority (from now on they will be referred to together as 'enforcement authority') can gather information to effectively monitor compliance
- how the enforcement authority should receive and share information with the Secretary of State, with other enforcement authorities, and with UK Government departments
- how the enforcement authority should share information through reports on which regulated businesses have been issued with civil sanctions
- how the enforcement authority can investigate compliance. This will include details on the suite of standard investigatory powers and how these can be used by the enforcement authority, including any restrictions
- how the enforcement authority may use civil sanctions where a business has breached regulations to bring the offender back to compliance
- the types of criminal procedures that may be used for offenders who have failed to comply with civil sanctions imposed, or who obstruct or fail to assist an enforcement authority in the operation of their duties
- the process of appeals heard by the First Tier Tribunal, should a business dispute a civil or criminal sanction
- the method of charging regulated businesses for the cost of enforcement activity. This will include an equal charge for each regulated business to recover the total cost of enforcement activity in each year

136. We propose that for variable monetary penalties, the maximum penalty is £250,000, in line with other regimes, such as the Ivory Act.

137. We will provide guidance to businesses on how civil sanctions will be used.

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

- Yes
- No
- Do not know

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