



Date
05-Oct-20

Response to the Government consultation on due diligence on forest risk commodities

Background

- The Local Authority Pension Fund Forum was set up in 1991 and is a voluntary association of 81 local authority pension funds and six LGPS pools, based in the UK with combined assets of approximately £300 billion. It exists to promote the investment interests of the funds, and to maximise their influence as shareholders to promote high standards of corporate governance and corporate responsibility amongst the companies in which they invest. The Forum has taken the opportunity below to provide our view on those issues which we consider relevant to our activities.

Response

- LAPFF recognises the problems that exist within supply chains regarding deforestation and actively encourages the introduction of new legislation to provide better due diligence surrounding forest risk commodities. LAPFF further considers it should be made illegal for larger businesses to use these commodities that have not been produced in accordance with relevant local laws.

Detailed response

Section A

Question 1: What is your name?

- Alistair Tucker

Question 2: What is your email address?

- Alistair.tucker@pirc.co.uk

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

Section B

Question 1: What type of organisation are you responding on behalf of?

- Industry association

Question 2: Can you provide your organisation's name?

- Local Authority Pension Fund Forum (LAPFF)

Section C – Not Applicable

Section D:

Question 1: Should the Government introduce legislation designed to make forest risk commodities more sustainable?

- Yes

Question 2: Should it be illegal for businesses to use forest risk commodities in the UK that have not been produced in accordance with relevant laws?

- Yes

Question 3: Should businesses in the UK be obliged to have a system of due diligence in place to ensure that the forest risk commodities they use have been produced in accordance with relevant laws?

- Yes

Question 4: Should businesses be required to report publicly on their system of due diligence?

- Yes

Question 5: Should the Government be able to levy fines against businesses that use forest risk commodities not produced in accordance with relevant laws?

- Yes

Question 6: Should the legislation apply to larger businesses, over an employee number and turnover threshold, that use forest risk commodities in production or trade?

- Yes

Question 7: If you responded 'Other' to Question 6, please expand.

- NA

Question 8: Large businesses have existing obligations to report on climate and environment issues including in relation to net zero. To what extent are there opportunities to align the proposal set out in this consultation with businesses' reporting under existing international frameworks [e.g. the recommendations of the Taskforce on Climate-Related Financial Disclosures (TCFD)]?

The TCFD framework recognises that agriculture and forest producers generate significant 'non-point' carbon emissions. These are primarily through land-use practices, and changes to them, and include deforestation or afforestation. LAPFF considers that the TCFD framework is best practice for climate related decisions and that reporting according to this framework should be mandatory, widespread and implemented on a comply or explain basis.

Question 9: Do you have any further information or comments you would like us to be aware of?

LAPFF would welcome the introduction of new legislation requiring companies to undertake higher levels of due diligence surrounding forest risk commodities. LAPFF recognises the crucial role the world's forests play in absorbing and storing carbon, sustaining ecosystems and providing a livelihood and natural resources for resident communities the world over.

Context

Deforestation is not showing any signs of slowing down as it was reported in June 2019 that clear cutting in Brazilian rainforests had increased by 88% compared to the same time in 2018.¹ Deforestation in the Brazilian Amazon is at levels that have not been seen since the 2000's, rising 96% since President Jair Bolsonaro took office in January 2019.²

It is clear that the UK has a role to play in this deforestation as based on figures taken between 2016 and 2018, a total of 21.3 million hectares of land, the equivalent of 88% of the total UK land area, was required each year to satisfy the UK's demand for seven agricultural and forest commodities: beef & leather, cocoa, palm oil, pulp & paper, rubber, soy and timber. Furthermore, around 28% of the UK's overseas land footprint has been located in countries assigned a 'very high' and 'high risk' score, exemplified by the WWF as 'those that experience high destruction of nature and with poor track records of labour rights and governance'.³ With these statistics in mind, it is imperative that larger businesses provide ample environmental and human rights due diligence for forest risk commodities and provide transparent reporting around their supply chains.

LAPFF's View

LAPFF already encourages companies to provide transparent reporting on a number of climate related issues, to make it a necessity for companies to do this would be invaluable. Making it illegal for larger companies to use these

¹ <https://www.dw.com/en/brazil-registers-huge-spike-in-amazon-deforestation/a-49462773>

² <https://news.mongabay.com/2020/07/deforestation-rate-climbs-higher-as-amazon-moves-into-the-burning-season/>

³ <https://www.wwf.org.uk/riskybusiness>

commodities would not only be advantageous in the immediate sense of forcing companies that have previously not taken precautionary measures in ensuring that they are not using illegally sourced commodities, but it could arguably encourage government bodies and other business enterprises to take action.

LAPFF has already actively undertaken engagement surrounding deforestation and supports the Sustainable Development Goals (SDGs) including Goal 15 (life on land) which seeks to preserve the biodiversity of forests, restore degraded forests and protect the habitat for endangered species. LAPFF currently expects companies whose value chain is reliant on the use of forest products to adopt policies that ensure the lifecycle of its product is certified by the Forest Stewardship Council (FSC) or the Programme for the Endorsement of Forest Certification (PEFC).

Business Size

LAPFF notes that the proposed legislation will apply to a 'small number of larger companies', so it would be helpful to demonstrate what the Government considers to be a 'larger company' for the purpose of the proposal. Whilst it would be welcomed for this law to apply to larger companies, LAPFF considers that any company, with the means to provide governance oversight to ensure that commodities it is using are legally sourced, should be doing so. Furthermore, there are potential concerns in having this law apply only to 'larger companies'.

There is also a possibility that some of the defined 'larger' companies could be importing forest risk commodities in small amounts, whilst some 'smaller' companies' business models could be entirely reliant on the import of a forest risk commodity such as beef.

These 'smaller companies' could be importing more commodities than companies that are larger but use less of the higher risk commodities overall and thus could escape being caught within the scope given of the law even though their import amounts could be larger than that of 'large' companies defined by size. Furthermore, if the smaller companies are suppliers of other larger companies, presumably they would be caught under the proposed legislation. However, if they operate independently of larger suppliers, it is not clear that they would be, and there is contingent concern that suppliers might find an incentive to source from these smaller companies not caught by the proposed law in order to avoid costs associated with the proposed due diligence.

Consequently, the legislation could arguably benefit from either defining the scope of application to the amount of the defined commodities that they import rather than the size of the company, or to all sizes of businesses. LAPFF notes that the latter approach would be consistent with the approach taken in the UN Guiding Principles in Business and Human Rights.

Financial Institutions

It is also noted that financial institutions are not included in the current scope. Legislation should apply further to financial institutions, making it illegal under

the Act to fund or finance any form of business that would contribute directly to deforestation with a given timeline to mitigate any current risk in their portfolios.

Human Rights Coverage

Whilst the legislation covers environmental issues, human rights abuses are not covered within the current scope. This legislation comes at a time where [harm to environmental rights defenders is rising](#). Whilst the effort to tackle deforestation is welcomed, it is essential that human rights abuses are considered fully alongside the environmental impacts. Mandatory human rights due diligence, including impact assessments and reporting of them would enable transparency around this issue and would be a welcomed addition to the proposed legislation. In line with the Forum's commitment to a just transition to a net zero carbon economy, LAPFF therefore supports legislation that embeds both environmental and human rights due diligence and creates a level playing field for firms and investors seeking to reduce their impact on deforestation and their negative impacts on human rights through commodity supply chains.

Local Laws

With government bodies in various parts of the world looking to deregulate environmental protection and create a framework where deforestation is considered legal, LAPFF would like to raise concerns about the proposed legislation's benchmark of local law. If companies were to be held to account based solely on a local standard, this legislation could entrench increased deforestation as some governments seek to make deforestation legal within their local laws. An important example of this phenomenon is in Brazil where the country is currently pursuing environmental deregulation that would erode protection of the Amazon. If mass deforestation were to be considered legal within local law, it would seem to lead to no fines for larger companies under the current proposal. LAPFF therefore suggests that the scope of legality within the legislation should be rooted in a defined, international standard, such as those noted in the Consultation document, where local laws do not meet this standard.