Forest Risk Commodities – legislative consultation

Overview

Defra published a consultation on 3rd December 2021 seeking views on secondary legislation which would enact the obligations on forest risk commodities established under the Environment Act 2021. The consultation follows on from recent EU Commission proposals on the same subject but the Defra consultation is less specific in a number of areas, including the specific information which would be required to deliver an appropriate risk assessment.

Outline

The consultation seeks views on legislation that would require businesses to show that seven commodities, and products from those commodities, are not produced on land that has been deforested. Businesses would be required to implement a due diligence and reporting system. Part of the consultation seeks view on how long to allow businesses to prepare for regulation.

The seven commodities are: Soya, Beef (inc leather), palm oil, maize, rubber, cocoa and coffee

Definitions

Forest: area of land more than 0.5 hectares with tree canopy cover of at least 10% (would appear to exclude trees used for shade coffee canopies)

Forest Risk Commodity: a commodity produced from a plant, animal, or other living organism and for the production of which the Sec of State considers forest is being or may be converted to agricultural use

Scope

Consultation argues that the seven listed commodities are responsible for approximately 65% of deforestation associated with UK supply chains (the relative percentages of each of the 7 commodities is not given)

Defra will consider further evidence to test which commodities should be considered in scope.

Legislative Sequencing

The consultation proposes a staged approach, introducing the legislation for the higher impact commodities first. This would allow a quicker impact but also the opportunity to learn lessons. As an example, the consultation suggests introducing 2 commodities could be done within 2 years whereas introducing all 7 at the same time could take 5 years to bring into operation.

Q: Given figures suggest coffee has one of the smallest impacts of the 7 commodities which sequencing approach would we favour?

Businesses in Scope

- Proposal is to use turnover in the previous financial year to determine if in scope
- UK based businesses would have turnover calculated only on their UK activities
- For non-UK based businesses, the proposal seeks views on using either global or UK based turnover – recognising challenges in determining turnover with the limited data available

Q: The turnover threshold is likely to be set between £50 and £200 million, recognising the differences between commodity supply chains. What would be an appropriate turnover position for coffee?

Exemptions

Exemptions may exist for businesses which are above the turnover threshold but whose use of forest risk commodities is small by comparison – may be more related to companies using by-products or processed products within part of their business.

The consultation proposes a number of different ways to calculate the level of commodity use including verifiable data from supply chains and specific conversion values (for use in embedded products – e.g. how much soya embedded in milk given soya might be used in dairy cow diets)

Q: To determine the level of commodity use, below which an exemption from compliance would apply, Defra has proposed a range of tonnages from 1 to 1,000 tonnes. What level of usage would be appropriate for coffee?

Due Diligence & Risk Mitigation

The consultation is light on specific detail but does indicate that legislation will determine a risk mitigation level. The over-riding aim however will be that businesses in scope should 'eliminate risk or reduce risk to as low as reasonably practicable'.

The aim would be to provide guidance to help both business and regulators to understand what the expectations are on the steps that should be taken.

Guidance would include understanding whether producing countries are low, medium or high risk for illegal land use and land ownership.

Businesses would need to provide details in annual reports as to how risk has been both assessed and, where necessary, mitigated. It is anticipated the level of detail would be built up over time.

Some of the additional methodology to support compliance listed in the consultation includes certification schemes, contract clauses, active land use monitoring and isotopic testing

Q: Would we support the Government guidance giving more detail on how existing certification schemes and standards might help to meet the due diligence requirements? – could include proof of legality; chain of custody; robustness; and transparency + others?

Further information on due diligence

Q: The consultation seeks more information from businesses on aspects such as: indicators/ metrics on land ownership; current methodology used to confirm deforested land has not been used; resources available to understand legal frameworks in origin countries; and how long it would take to move supply chains to fully legally assured?

Charging and Penalties

The consultation indicates the cost of enforcement will be met by all obligated businesses paying a set charge equal to the cost of enforcement that year (therefore variable from year to year?)

A maximum penalty of £250,000 is envisaged as this is in line with existing legislation in other areas.