



Response to UK Export Finance consultation on proposals to make changes to the Secretary of State's powers under the Export and Investment Guarantees Act 1991 (as amended)

16 April 2014

1. The CORE Coalition is an authoritative and influential network of NGOs, academics, trade unions and legal experts which brings together the widest range of experience and expertise on UK corporate accountability in relation to international development, the environment and human rights. Our aim is to reduce business-related human rights and environmental abuses by making sure companies can be held to account for their impacts both at home and abroad, and to guarantee access to justice for people adversely affected by corporate activity.
2. CORE believes that any proposals to make changes to the Secretary of State's powers under the Export and Investment Guarantee Act 1991 (as amended) should fully reflect the Environmental, Social and Human Rights dimension of UK Export Finance's (UKEF) activities.
3. This is clearly not the case with the proposals that are the subject of this consultation. The proposed revisions make no reference to human rights or the environment. There is a sweeping assumption that if UKEF's operations remain '*subject to applicable EU laws and regulations (including those relating to State aid) and international agreements which apply to national export credit agencies*', there is no need for the Secretary of State's powers to address the social and environmental context of UKEF's operations.
4. CORE rejects this approach as it is regressive and reinforces UKEF's existing deficiencies in this area. CORE's specific concerns are as set out below.
5. **Fundamental policy changes are envisaged without proper assessment of their human rights impacts.**

The consultation document makes no reference to human rights, the environment, debt sustainability or development. It appears to assume that there are no human rights implications of the proposed changes. Yet there is no indication in the proposals that UKEF has undertaken a human rights impact assessment of these policy changes or that such an impact assessment is necessary.

CORE believes that it is an essential part of governmental processes to anticipate, assess and take into account the consequences of administrative decisions. The fact that outcomes may be unpredictable and difficult to anticipate with accuracy does not obviate the need for the government to attempt to assess the range of impacts its policy changes are likely to have.

6. The proposed changes are not aligned with the UK's commitment to the UN Guiding Principles on Business and Human Rights and its implementation plan to give effect to this.

In September 2013 the Secretaries of State for Foreign Affairs and for Business, Innovation and Skills launched a National Action Plan entitled '*Good Business: Implementing the UN Guiding Principles on Business and Human Rights*'.

One of the commitments set out in this plan under the State's Duty to Protect Human Rights 2(iv) is for the UK to '*Review the degree to which the activities of UK State-owned, controlled or supported enterprises.....are executed with respect for human rights, and make recommendations to ensure compliance with the UNGPs.*'

The proposed revisions to the Secretary of State's powers ignore this commitment.

7. The proposed changes do not assimilate current standards and best practice on business and human rights.

The UN Guiding Principles on Business and Human Rights, which UK has endorsed, refer to the role of export credit agencies. Principles 4 sets out the requirement that:

'States should take additional steps to protect against human rights abuses by business enterprises that.....receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.'

It is difficult to see how the Government can fulfil the role required under the UN Guiding Principles in light of proposed changes to the Export and Investment Guarantees Act which have neglected any consideration of the human rights implications. UKEF's intention to '*broaden UK Export Finance's powers to enable it better to provide support, not only for export contracts, but also to companies engaged in exporting or who may wish to export*' needs to be counter-balanced by clear and explicit safeguards to protect human rights and the environment in the context of this enhanced support. No such increased safeguards are proposed in the consultation document.

8. The proposed policy changes ignore the recommendations of Parliamentary committees.

Implicit in the proposed policy changes is the assumption that upholding human rights and environmental standards would put UKEF at a competitive disadvantage. This is reflected in the assertion (paragraph 9) that:

'The Government's policy is to seek a level playing field for UK exporters by regulating the activities of state-backed ECAs through international agreements and understandings. From

2010, following a public consultation, UK Export Finance has operated a policy of applying international agreements that relate to the activities of ECAs but not going beyond them.'

By neglecting to address environmental, social and human rights issues, the proposed revisions are fundamentally at odds with the 2012 report of the inquiry into UKEF conducted by the All Party Parliamentary Group on International Corporate Responsibility. The report's final conclusion was:

'The inquiry holds that delivering export-led growth and upholding ethical and environmental business standards are not mutually exclusive; that examples exist of export credit agencies from all over the developed world that are at once more active in supporting their countries' exports and demand more rigorous standards in their human rights and environmental due diligence. If UKEF is to genuinely fill a gap that the private sector cannot provide, demanding reasonable standards of their clients in this space should not impede British competitiveness and with public money, certain standards should be expected to protect the reputation of British business.'

9. The proposed changes rely on inadequate international standards.

The OECD standards referred to in paragraph 14 of the consultation document are presented as the ceiling for UKEF in so far as paragraph 9 states that *'UK Export Finance has operated a policy of applying international agreements that relate to the activities of ECAs but not going beyond them.'* This is an abdication of responsibility by UKEF with regard to human rights and the environment. Such an approach is inconsistent with UK's commitment to the UN Guiding Principles on Business and Human Rights which embody much higher expectations than the OECD Common Approaches referred to in paragraph 14 (v).

The APPG on International Corporate Responsibility set out three recommendations in the 2012 report of its Inquiry into UK Export Finance, which go well beyond the requirements of the OECD Common Approaches:

Recommendation 8

*'UKEF should regard the OECD Common Approaches as a starting point for ESHR standards; **expand the standards to all project applications**, including aerospace and at all values; impose penalties on companies that violate standards; appoint a non-executive director to the management board with human rights experience and allow EGAC to review current applications on request. No project should be granted cover until its ESHR assessment is completed. More transparency is welcomed.'*

Recommendation 9

*'UKEF should establish a **grievance mechanism**; consult on a prohibitions list for arms; and conduct a review of existing best practice on human rights and the environment in the private sector to ensure UKEF standards do not cover projects that the private sector would not on ethical grounds.'*

Recommendation 10

‘UKEF should **publish all impact assessments**, subject to reasonable commercial confidentiality constraints and audit all debts owed.’

10. UKEF’s proposals to make changes to the Secretary of State’s powers fall far short of the standards of conduct on human rights and the environment that are envisaged in the above recommendations of the APPG’s Inquiry. No reason is provided in the consultation document as to why these higher standards should not become part of the regulatory framework governing UKEF’s operations in future.

CORE urges the Government to rethink its approach to extending the Secretary of State’s powers under the Export and Investment Guarantees Act in light of the above arguments.

ENDS

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