

A new corporate duty to prevent adverse human rights and environmental impacts: *What is it and why is it needed?*

Frequently Asked Questions

March 2020

Contents

1. Why do we need a new law to prevent human rights and environmental abuses by businesses?	2
2. What are we calling for?	2
3. What is Human Rights Due Diligence?	3
4. What does this mean in practise? What would the law require companies to do?	3
5. How would the law make a difference to people and the environment?	4
6. Which companies would be covered under the law? Would SMEs be included?	4
7. What would happen if companies violated the law?	5
8. Isn't it just a minority of companies who are involved in abuses?	5
9. Aren't business already taking action to address these issues?	5
10. Don't companies already have to report on their supply chains under the Modern Slavery Act? Why do we need another law?	6
11. Would it be more appropriate to focus on the most problematic business sectors, rather than introducing a new requirement for all firms?	6
12. Won't it put UK companies at a disadvantage? Why would businesses ever accept it?	7
13. Won't the cost to companies be disproportionate to the benefits?	7
14. Is there support for mandatory HRDD in other countries? Has it been introduced already?	8

1. Why do we need a new law to prevent human rights and environmental abuses by businesses?



UK companies operate in, and source products and materials from all over the world. They have a **responsibility to uphold international human rights and environmental standards**, wherever they operate. But at the moment, this often doesn't happen.

In many countries, laws obliging companies to take steps to prevent human rights abuses and damage to the environment are weak, with some governments reluctant to regulate businesses for fear they will move their operations elsewhere. When laws are in place, the resources needed to enforce them often aren't available.



States' motivation and ability to regulate can also be constrained by international investment agreements, which enable companies to sue governments for lost earnings arising from the introduction of laws intended to improve protection of the environment and human rights.¹ **This allows some businesses to gain a competitive advantage and to maximise profits by cutting corners, exploiting workers and disregarding environmental standards.**²

Business practices can have a negative effect on workers, for instance through dangerous working conditions, forced labour and repression of trade unions. They can also affect communities close to company operations, for instance through toxic pollution, destruction of natural resources, land-grabs and attacks on human rights defenders. **People affected by corporate abuse often face long and difficult struggles for justice, in part because complex corporate structures and multiple tiers of subcontractors and suppliers enable companies to evade responsibility.**³

2. What are we calling for?



We are calling for UK legislation to create a new **corporate duty to prevent** adverse human rights and environmental impacts.



Under this law, companies (and depending how the law was drafted, public authorities, such as government departments or local authorities that purchase work, goods or services from companies) would have to **take action to prevent human rights abuses and environmental harm** in, or arising from their global products, services, operations, investments, and value chain, through carrying out human rights and environmental due diligence.

Properly implemented, the law would make it easier to hold businesses to account if they failed to do so. Organisations could be sanctioned if they fail to put in place adequate due diligence measures and held liable for harm, loss and damage arising from their failure to prevent harmful impacts.

3. What is Human Rights Due Diligence (HRDD)?

Due diligence is a familiar concept in business. **It simply means carrying out checks and acting to make sure that the company understands and manages risks.** These could be financial risks or risks to customers and employees. HRDD is the same process, applied to human rights risks.



The concept of HRDD has been established as a clear expectation for businesses under the **UN Guiding Principles on Business and Human Rights (UNGPs)**, which define HRDD as: “An ongoing risk management process...in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts.”⁴ The UNGPs were endorsed by the UN Human Rights Council in 2008, and **in 2011 the UK Government committed to implementing them.** HRDD is also integrated into the OECD Guidelines for Multinational Enterprises and is described in detailed in the OECD’s Due Diligence Guidance for Responsible Business Conduct. The UK is one of the 36 national members of the OECD.



We are calling for a law that requires companies to carry out due diligence in relation to all **negative human rights risks and environmental impacts**, since human rights and environmental protection are interdependent.



4. What does this mean in practise? What would the law require companies to do?

Under the law, companies would be required to

- **Identify and assess risks to human rights and the environment** with respect to their products, services, operations, investments, and value chain;
- **Take action to mitigate and prevent risks** to human rights;
- **Track and publicly report** on implementation and effectiveness of measures taken;
- **Follow-up on the outcomes of the process**, including providing remedy to victims and improving due diligence procedures on an ongoing basis.



For instance, as part of its due diligence, a UK agri-business company could identify that one of its subsidiaries has violated labour rights and drained the surrounding rivers, leaving local people with little access to water and sanitation. The company might identify that the low prices it pays its suppliers, combined with a lack of due care to the impact of the activities of its subsidiary on the surrounding population, have contributed towards these abuses of human rights and environmental standards.

The company would then be expected to make changes to its practices to ensure that workers’ rights are safeguarded: for instance, reviewing its prices; putting in place a grievance system in consultation with workers; ensuring that its operations did not harm the environment; and providing remedy to any workers and communities who have been

impacted. It would be expected to report on these steps, and to follow up to ensure that they were having the desired effect.

The due diligence should be proportionate to the severity and likelihood of the adverse impact. It would be tailored to specific risks and how they affect particular groups, such as taking into account how actual or potential adverse impacts may differ for, or may be specific to, women or children.⁵

5. How would the law make a difference to people and the environment?

Making human rights due diligence mandatory for businesses would have a two-fold outcome.

Mandatory human rights due diligence for business will help to prevent corporate abuses and improve access to remedy for victims of corporate abuse.

Firstly, it would have a preventative effect. It would require company boards and management to prioritise action to address risks to people and the environment, rather than just risks to the company. It would also encourage collaboration across the business and with other stakeholders. Done properly, this would lead to risks being appropriately managed and prevented, reducing corporate abuses.

Secondly, it would also help to alleviate some of the obstacles faced by victims of corporate-related human rights and environmental abuses, when they seek remedy. We want the new law to include provisions that would make it more straightforward to establish a UK company's liability for human rights abuses and environmental damage which it has caused or is linked to its subsidiaries; or, in certain circumstances, suppliers. This would make it easier for people impacted by corporate malpractice to bring an action against the company in the UK courts and to be compensated for the harm they have suffered.

6. Which companies would be covered under the law? Would SMEs be included?

SMEs play a central role in the global economy. While their operations are smaller, depending on the nature of the business their impact on human rights can be significant, and like larger companies, they have a direct responsibility to respect human rights.

While the requirement may seem daunting for SMEs, **the requirements on companies would be proportionate to their size.** Many SMEs are already ahead of larger firms in terms of responsible business practice. Smaller companies are often able to be more flexible than large companies, allowing them to respond better to changes in their supply chains and to engage more directly with their suppliers.

A level playing field would help these companies by raising standards across the board. Depending on how the law was drafted, it could apply initially to larger companies and be

rolled out progressively to other firms, or it could exclude SMEs operating in sectors which have a low risk of human rights and environmental harms.

7. What would happen if companies violated the law?

If it could be shown that the UK parent company had failed to take appropriate action to prevent and address human rights and environmental risks and impacts in its operations, **it could be held liable in a UK court and made to pay compensation to the victims.** Evidence showing that the company took due care to identify and mitigate adverse impacts on human rights and the environment would form part of the defense.

Depending on how the law was drafted, **a regulator could be charged with overseeing the requirement to report on a company's due diligence, with administrative sanctions** (such as fines or directors' disqualification) available for failure to do so. There could also be individual criminal penalties for corporate involvement in gross human rights abuses.



8. Isn't it just a minority of companies that are involved in abuses?

It's often thought that only a minority of companies, such as those implicated in high profile cases, have a negative impact on people and planet. But **corporate misconduct is often a result of wider systematic industry failings**, as well as the failure of Government to regulate industries or to enforce existing regulations. These failings implicate many companies.

The Corporate Human Rights Benchmark (CHRB), an initiative which ranks disclosures on human rights from the 101 largest publicly-traded companies in the world, indicates that the majority are not demonstrating sufficient respect for human rights.⁶ **49% of companies scored zero against every human rights due diligence indicator**, backing other studies that have shown similar results.⁷

The CHRB and other research has found that **even where companies report on their risks and impacts on human rights, few are actually taking action to address them.**⁸ The disparity between the small number of leading companies and those in the lower scoring bands has the potential to become entrenched, as the CHRB note. **This creates a commercial disadvantage for companies that are aiming to operate at a higher standard.**

49% of companies are reporting performing no human rights due diligence, according to the CHRB.

9. Aren't businesses already taking action to address these issues?

The majority of businesses are not taking the necessary steps to identify risks to human rights and the environment, or to prevent those risks from materialising. **While voluntary approaches can play a part in improving standards of business conduct, they are insufficient**

on their own to address systemic problems which give rise to corporate human rights and environmental abuses. In the absence of a legally binding requirement, only a minority of very well-intentioned companies, or those facing consumer scrutiny, decide to invest in improving their performance.



There is an international consensus on the need for a **“smart mix” of legislative and voluntary measures to achieve lasting change.** A law on HRDD would contribute to this, by legally requiring companies to address and identify human rights and environmental risks.⁹

10. Don't companies already have to report on their supply chains under the Modern Slavery Act? Why do we need another law?

“Transparency is important, but alone it's not enough to address the social and environmental costs of business”

The Transparency in Supply Chain clause in the Modern Slavery Act 2015 requires companies with a turnover of more than £36 million only to *report* on the measures they're taking to prevent slavery and human trafficking in their supply chains. While the Act has generated company disclosures on, and raised awareness of extreme labour rights abuses, it **doesn't require businesses to take action to address risks and impacts.**

Transparency is important, but alone it's not enough to address the social and environmental costs of business. The current reporting requirement is also limited to modern slavery, excluding other human rights and labour rights abuses, and negative environmental impacts. The UK currently has no laws in place to make companies accountable for negative human rights and environmental impacts in their international operations and supply chains.



UK companies should be required to map the full extent of their impacts on human rights and the environment throughout their activities and supply chains, act to prevent negative impacts now and in the future, and be held accountable when abuses occur. A recent report from the British Institute of International and Comparative Law found that a “failure to prevent” mechanism for corporate human rights harms, modelled on the UK Bribery Act, would be feasible.¹⁰

11. Would it be more appropriate to focus on the most problematic business sectors, rather than introducing a new requirement for all firms?

While some sectors, for instance garment manufacturing and extractives, have been typically associated with human rights abuses and environmental degradation, **companies in all sectors have a responsibility to respect human rights and the environment.** Single-sector regulation risks creating a patchwork of different, overlapping requirements. This could create confusion for businesses.

General human rights due diligence legislation with broad scope and applicability would create clarity and enable companies to focus on the most salient risks for human rights and the environment in their own business.

12. Won't it put UK companies at a disadvantage? Why would businesses ever accept it?

It's a misconception that businesses always oppose regulation on responsible business conduct. Businesses have supported regulation that aims to sustain fair competition and raise standards across the board, such the Transparency in Supply Chains provisions in the Modern Slavery Act.

Businesses, including those operating in the UK, also support the introduction of human rights and environmental due diligence legislation in Europe.¹¹ Well-known brands including Nestle, Heineken and ASOS supported legislation on slavery and child labour due diligence in the Netherlands.¹² In Finland, 32 companies have joined a campaign calling for mandatory HRDD legislation.¹³ And the Swiss Association 'Groupement des Entreprises Multinationales' (GEM), representing 90 large multinational companies, supports a Swiss legislative proposal for mandatory HRDD.¹⁴

A growing number of investors also expect companies to demonstrate respect for human rights. Members of the Investor Alliance for Human Rights currently represent \$3.5 trillion assets under management,¹⁵ while a group of more than 20 Swiss and international asset owners and asset managers recently published a letter expressing support for the introduction of legislation on HRDD in Switzerland.¹⁶

The vast majority of **companies surveyed by the British Institute for International and Comparative Law** disagreed with the statement that 'existing law provides businesses with clarity about corporate human rights obligations.'¹⁷



13. Won't the cost to companies be disproportionate to the benefits?

A recently published European Commission study on supply chain due diligence found that **any increase in financial costs for carrying out due diligence in the supply chain will remain relatively low compared to companies' revenues.** For SMEs, these costs are estimated at around 0.14% of their revenue, and for larger companies around 0.009% of their revenue.¹⁸ Concretely, this would amount to an additional cost of 740 EUR per annum for companies with a revenue under 1,000,000 EUR.¹⁹

“Companies are likely to benefit financially from mandatory due diligence legislation”

The study also found that **companies are likely to benefit financially from mandatory due diligence legislation**, thanks to the new legal certainty, a level playing field and the leverage they have on third parties in their supply chain. Reputational costs, which are stated to be one of the biggest incentives for business respondents to carry out due diligence, are likely to decrease with mandatory due diligence requirements. While these significant benefits are difficult to quantify, **they might outweigh the economic costs related to mandatory rules.**²⁰

14. Is there support for such legislation in other countries? Has it been introduced already?

There is a growing trend towards introducing mandatory HRDD, both in Europe and further afield.²¹ **The French “Duty of Vigilance” law**, passed in 2017, requires the largest French companies to create a ‘Vigilance Plan’ describing what they’re doing to avoid negative human rights impacts.²² In 2019 the Dutch senate voted to pass the **Child Labour Due Diligence law**. A proposal for a law to mandate HRDD is currently being considered by the Swiss parliament. **Civil society and policy makers have also moved to develop legislation in Germany, Finland, the Netherlands, Italy, Denmark and Sweden.** In Canada, a civil society group recently issued a call for HRDD legislation.²³



A 2019 study commissioned by the European Parliament recommends that the EU “strengthen human rights due diligence requirements, in particular through the adoption of a new legislation at the EU level requiring mandatory human rights due diligence across sectors.”²⁴ **The European Commission’s 2020 study confirms that there is urgent need for regulatory action at the EU level**²⁵ and civil society organisations have put forward a set of minimum provisions for draft legislation.²⁶

In the UN Human Rights Council, states, experts and civil society groups have been examining potential language on mandatory human rights due diligence as part of the negotiations on a draft treaty on business and human rights.²⁷

The UK has shown leadership on transparency legislation with the supply chain reporting requirement in the Modern Slavery Act. Developments in Europe and beyond indicate that a new generation of laws is now emerging. Our government now has the opportunity to help shape global requirements for companies. **By moving ahead with legislation on mandatory human rights and environmental due, the UK can retain its leadership in promoting responsible business conduct.**

“a new generation of laws is now emerging. Our government now has the opportunity to help shape global requirements for companies.”

-
- ¹ For more information, see the Stop ISDS campaign: <https://stopisds.org/>
- ² CORE Coalition (2015) *The Bottom Line: UK Corporate Abuse Overseas* https://corporate-responsibility.org/wp-content/uploads/2015/10/The-Bottom-Line-report_final-digital-version.pdf
- ³ Policy Department for External Relations, Directorate General for External Policies of the European Union (2019) *Access to legal remedies for victims of corporate human rights abuses in third countries*. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU\(2019\)603475_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/603475/EXPO_STU(2019)603475_EN.pdf)
- ⁴ UN (2011) *Guiding Principles on Business and Human Rights* https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- ⁵ <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>
- ⁶ *Corporate Human Rights Benchmark* (CHRB) 2019. Available at: <https://www.corporatebenchmark.org/>
- ⁷ A 2017 study of 3000 companies listed in 35 different countries showed that only a minority implement due diligence. Vigeo Eiris (2017) *Businesses' responsibilities for human rights in a changing world*. Available at: http://www.vigeo-eiris.com/wp-content/uploads/2017/02/20170222_PR_HR_study_EN-def.pdf
- ⁸ Workforce Disclosure Initiative (2018) <https://shareaction.org/wdi/2018-findings/>
- ⁹ Shift (2019) *Fulfilling the State Duty to Protect: A Statement on the Role of Mandatory Measures in a "Smart Mix."* Available at: <https://www.shiftproject.org/news/fulfilling-the-state-duty-to-protect-mandatory-measures-smart-mix/>
- ¹⁰ British Institute of International and Comparative Law, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms* (2020) https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf
- ¹¹ Business and Human Rights Resource Centre (2019) *List of large business associations that support human rights due diligence* <https://www.business-humanrights.org/en/list-of-large-businesses-associations-that-support-human-rights-due-diligence-regulation>
- ¹² *Een wet zorgplicht kinderarbeid, pakt kinderarbeid serieus aan* (2017) https://tonyschocolonely.com/storage/configurations/tonyschocolonelycom.app/files/wetzorgplichtkinderarbeid/standpunt_gezamenlijk_bedrijfsleven_-_deskundigenbijeenkoms_031017_-_initiatiefwet_zorgplicht_kinderarbeid.pdf
- ¹³ Finnwatch, *Companies pushing for Finland to adopt mandatory human rights due diligence legislation* (2018). Available at: <https://finnwatch.org/en/news/573-companies-pushing-for-finland-to-adopt-mandatory-human-rights-due-diligence-legislation>
- ¹⁴ Neue Zürcher Zeitung (2018) *90 Unternehmer unterstützen die Konzerninitiative*. Available at: <https://www.nzz.ch/wirtschaft/konzerninitiative-von-90-unternehmern-unterstuetzt-ld.1440171>
- ¹⁵ <https://investorsforhumanrights.org/about/members>
- ¹⁶ IPE (2019) "Investors urge support for Swiss human rights due diligence law" <https://www.ipe.com/countries/switzerland/investors-urge-support-for-swiss-human-rights-due-diligence-law/10031639.article>
- ¹⁷ The Times (2020) "Companies seek bolder human rights legislation" <https://www.thetimes.co.uk/article/companies-seek-bolder-human-rights-legislation-c925bmv6w>
- ¹⁸ British Institute of International and Comparative Law, Civic Consulting, Directorate-General for Justice and Consumers (European Commission), LSE (2020) *Study on due diligence requirements through the supply chain: Part I, Synthesis report*, p. 66 <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>
- ¹⁹ Ibid, Final Report, Study, pp. 428-29
- ²⁰ Ibid, Part I, Synthesis report, p. 66

²¹ ECCJ (2019) *Legal analysis of HRDD and corporate liability laws in Europe* <https://corporatejustice.org/news/16783-eccj-publishes-comparative-legal-analysis-of-hrdd-and-corporate-liability-laws-in-europe>

²² European Coalition on Corporate Justice (2017) *French Corporate Duty of Vigilance Law – Frequently Asked Questions* <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>

²³ Canadian Network on Corporate Accountability (2019) *Letter to Minister Monsef calls for advances on mandatory human rights due diligence legislation*. Available at: <http://cnca-rcrce.ca/recent-works/letter-to-minister-monsef-calls-for-mandatory-human-rights-due-diligence-legislation/>

²⁴ Policy Department for External Relations, Directorate General for External Policies of the European Union (2019), *Access to legal remedies for victims of corporate human rights abuses in third countries*: [https://www.academia.edu/38482243/Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries](https://www.academia.edu/38482243/Access_to_Legal_Remedies_for_Victims_of_Corporate_Human_Rights_Abuses_in_Third_Countries)

²⁵ See footnote 18.

²⁶ ECCJ (2020), *Legal brief: EU Model Legislation on Corporate Responsibility to Protect Human Rights and the Environment* <https://corporatejustice.org/eccj-publications/16804-eccj-legal-brief-eu-model-legislation-on-corporate-responsibility-to-respect-human-rights-and-the-environment>

²⁷ Business and Human Rights Resource Centre (2019) *Binding Treaty on Business and Human Rights* <https://www.business-humanrights.org/en/binding-treaty>