

COMMERCIAL ORGANISATIONS AND PUBLIC AUTHORITIES DUTY (HUMAN RIGHTS AND ENVIRONMENT) BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Bill [HL] as introduced in the House of Lords on 28 November 2023 (HL Bill 17).

- These Explanatory Notes have been provided by Baroness Young of Hornsey in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill aims to place a duty on commercial organisations and public authorities to prevent human rights and environmental harms, including an obligation to conduct and publish human rights and environmental due diligence assessments, on their own operations, subsidiaries, and value chains. The Bill makes provisions for civil liability, penalties, and a criminal offence for failures to comply with the duty.
- 2 Provisions in the Bill have the intention of:
 - Establishing legal safeguards for the prevention of human rights and environmental harms within the operations of commercial organisations and public authorities and throughout their value chains, and enforcing the corporate responsibility to respect human rights,
 - Holding commercial organisations accountable for a failure to prevent harm through liability provisions and assisting victims in having clarity about their access to justice and remedy in the United Kingdom (“UK”),
 - Bringing the UK law more into line with the United Nations Guiding Principles on Business and Human Rights (“UNGPs”), the Organisation for Economic Co-operation and Development Guidelines on Responsible Business Conduct (“OECD Guidelines”), and International Labour Organization (“ILO”) Multinational Enterprises Guidelines.
- 3 The Bill is not intended to diminish or compromise the current and applicable human rights, health, safety, and environmental standards within the UK.

Policy background

- 4 In recent years, several countries introduced legislation to incorporate human rights and environmental due diligence into their legal frameworks. For example, in 2017, the French Parliament passed the French Corporate Duty of Vigilance Law, which requires the largest French companies to undertake due diligence to assess and address the adverse impacts of their activities on people and the planet by having them publish annual public vigilance plans.¹ In Germany, the Act on Corporate Due Diligence Obligations in Supply Chains entered into force on 1 January 2023, requiring many German companies to undertake human rights and environmental due diligence in their own business areas and supply chains.² Similarly, the European Commission proposed the Corporate Sustainability Due Diligence Directive in 2022, and the legislative process of the Directive is still underway.³ This Bill seeks

¹ <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626>

² <https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger> For full text of the Act in English, please see: Act on Corporate Due Diligence Obligations in Supply Chains of July 16 2021, available at: https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf?__blob=publicationFile&v=3

³ Council of the European Union, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, available at: <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>

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to ensure that the UK keeps pace with other countries in implementing human rights and environmental due diligence standards in line with the UNGPs.

- 5 Establishing a duty to prevent human rights was recommended by the Joint Committee on Human Rights in its report named "*Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability*."⁴ Several companies also indicated they would prefer clear legal guidance to operate in a more transparent market with best practices. In line with this background, the Bill establishes the "duty to prevent harm", that extends to harms that take place in the entire value chain, regardless of the location of the harm.
- 6 Barriers to access to justice for victims in other countries seeking to bring claims against UK companies or their subsidiaries were identified within the Joint Committee on Human Rights report named "*Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability*."⁵ Therefore, the Bill establishes commercial organisations' civil liability before the UK courts and with the intention of alleviating the obstacles faced by victims when they seek remedy.
- 7 A safe, clean, healthy and sustainable environment has been considered integral to the full enjoyment of a wide range of human rights by the UN Special Rapporteur on human rights and the environment.⁶ Environmental impacts might also occur together with human rights impacts, as seen in the *Vedanta Resources PLC and Konkola Copper Mines PLC v Lungowe and Others* 2019 UK Supreme Court case.⁷ Therefore, the Bill also includes environmental harms under the duty to prevent harm along with human rights harms.
- 8 In 2022, the UN Special Rapporteur on human rights and environment published a brief including a set of recommended elements for human rights and environmental due diligence laws. Among those elements, it was suggested that responsible disengagement requirements informed by the human rights and environmental due diligence process be included within the legislation.⁸ Therefore, the Bill also includes a special provision on responsible disengagement, where it underscores the importance of utilising leverage and fostering collaborations with business partners to address potential harms effectively in contexts where the prospect of change by using or increasing the leverage is possible. This approach aims to mitigate the risk of companies hastily or irresponsibly withdrawing from a business relationship. The Bill also addresses the risk of companies failing to disengage, when necessary, particularly where the harm is severe (for example, the cases of state-imposed forced labour).

⁴ House of Lords, House of Commons, Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability* (2017, p. 59 para. 193, available at: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>)

⁵ House of Lords, House of Commons, Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*, <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf> (2017, p. 49-50)

⁶ OHCHR, *About human rights and the environment: Special Rapporteur on human rights and the environment*, available at: <https://www.ohchr.org/en/special-procedures/sr-environment>

⁷ See: UK Supreme Court case, *Vedanta Resources PLC and Konkola Copper Mines PLC v Lungowe and Others* 2019 UKSC 20.

⁸ D. R. Boyd and S. Keene, *Policy Brief No. 3: Essential elements of effective and equitable human rights and environmental due diligence legislation* (2022), p. 10, available at: <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2022-07-01/20220701-sr-environment-policybriefing3.pdf>

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- 9 The Bill is, therefore, informed by this policy background and builds on the principles set under the UNGPs.

Commentary on provisions of Bill

Clause 1: Definitions

10 Clause 1 sets out the following definitions for the purpose of the Bill:

- “*Commercial organisation*” has the meaning provided under section 7(5) of the Bribery Act 2010.
- “*Public authority*” has the meaning provided under section 2(2) of the Procurement Act 2023.
- “*Value chain*” includes all activities undertaken by any entity during the lifecycle of a good or service upstream and downstream of the commercial organisation, including but not limited to; material sourcing, production, manufacturing, development, warehousing, sale, logistics, marketing, finance, use, and end-of-life disposal.
- “*Procurement*” is defined as the award, entry into, and management of a contract, including but not limited to a public contract.
- “*Human rights harms*” are any adverse impacts on a person’s ability to enjoy any of the internationally recognised human and labour rights, including those recognised in the International Bill of Human Rights and the International Labour Organisation Declaration on Fundamental Principles and Rights at Work, 1998.
- “*Environmental harms*” are adverse impacts on the environment resulting from the violation of international or national environmental law, including internationally established environmental principles or conventions, ecocide (meaning unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and widespread or long-term damage to the environment being caused by those acts) or as part of any contribution to climate change contrary to the pathways for limiting global warming to the internationally established goal of 1.5°C according to the best available science, or any other adverse impacts on specific environmental categories as defined by the Secretary of State in further regulation.
- “*Stakeholders*” are defined as individuals, groups, or communities that have rights or legitimate interests that are or may be adversely affected by human rights and environmental harm or the credible representatives of such individuals or groups, including the workers, their representatives, the trade unions, and those representing and defending human rights and environment.
- “*Informed, meaningful, and safe engagement*” is defined as a dynamic and continuous engagement process with stakeholders that involves interactive and responsive communication, timely provision of relevant information, and implementation of measures to address barriers to participation, especially for vulnerable or historically

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marginalised stakeholders along with measures to ensure the safety of stakeholders and prevent any form of retaliation or reprisals.

Clause 2: Duty to prevent human rights and environmental harms

- 11 Subsection (1) establishes a duty for commercial organisations and public authorities to prevent human rights and environmental harm so far as is reasonably practicable. This duty seeks to ensure that human rights and environmental harms do not take place in the commercial organisations' and public authorities' operations, products, and services, including those of their subsidiaries, and extends throughout their value chains.
- 12 Public authorities, using public procurement or providing financial and other support to businesses, could play a substantial role in driving the shift towards corporate responsibility for upholding human rights. The Bill, therefore, includes public authorities in its scope as a bearer of duty to prevent human rights and environmental harm while recognising that accountability provisions for the public authorities may differ.
- 13 Subsection (2) establishes that without prejudice to the generality of the duty, the duty to prevent human rights and environmental harm includes an obligation to conduct human rights and environmental due diligence.

Clause 3: Human rights and environmental due diligence

- 14 Clause 3 outlines the fundamental principles of the human rights and environmental due diligence process for the purposes of this Bill.
- 15 Subsection (1) sets out the minimum level of reasonable human rights and environmental due diligence, including:
 - a. integrating due diligence procedures into all policies and management systems,
 - b. identifying, assessing and addressing actual or potential human rights and environmental harms, through prevention, mitigation and remediation,
 - c. establishing or participating in and maintaining effective grievance mechanisms,
 - d. tracking, verifying, monitoring and assessing the effectiveness of measures taken and their outcomes, and
 - e. communicating with stakeholders and public reporting on findings.
- 16 Subsection (2) aims to ensure that human rights and environmental due diligence includes informed, meaningful, and safe stakeholder engagement throughout the entire due diligence process.
- 17 Subsection (3) outlines the non-limited requirements of a reasonable human rights and environmental due diligence process. It clarifies that reasonable human rights and environmental due diligence is determined by;
 - a. the size, sector, operational context, ownership, structure, country or region of operation, and the nature of the human rights or environmental harms in question,
 - b. the severity of human rights and environmental harm as determined by the scale, scope, and irremediability of the harm,
 - c. the extent to which the commercial organisation has exercised leverage over third parties in the value chain and made attempts to increase leverage for the purposes of the Bill.

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- d. the commercial organisation's prioritisation of human rights and environmental risks within its due diligence process and the reasonableness of such prioritisation,
 - e. the extent to which due diligence was an ongoing process with continuous monitoring and improvement.
- 18 Subsection (4) clarifies for duty bearers that audit reports, certification schemes, and membership in industry or multi-stakeholder initiatives for dialogue and learning are not deemed sufficient on their own to fulfil the obligation to conduct due diligence.

Clause 4: Responsible disengagement

- 19 Clause 4 outlines the principles of responsible disengagement for duty bearers for contexts where they decide to suspend or terminate a business relationship as a result of their due diligence assessment to comply with the Bill. This provision clarifies that a disengagement decision:
- a. must reflect reasonable human rights and environmental due diligence, consider any human rights or environmental harms that might arise from the suspension or termination the business relationship and how such harms might be prevented or mitigated, take into account remediation of harms that commercial organisations have failed to prevent prior to the decision of disengagement,
 - b. must be based upon informed, meaningful, and safe engagement with stakeholders that are or may be affected by the disengagement decision,
 - c. must be taken in a timely manner:
 - i. considering disengagement as a last resort, after failed attempts at mitigation, in contexts where the prospect of change by using or increasing leverage is possible, and
 - ii. considering rapid disengagement in contexts where the harm is severe, including scenarios where gross and systemic harm is imposed and enforced by polices adopted and imposed by states (such as State-imposed forced labour), and commercial organisations and public authorities lack the ability to prevent, mitigate or remediate the harm.

Clause 5: Reporting requirements

- 20 Clause 5 outlines the reporting requirements.
- 21 Subsection (1) requires public authorities and certain commercial organisations with an annual worldwide turnover of or exceeding the amount prescribed by the regulations made by the Secretary of State to publish and submit to the registry website a report. This report should describe a plan for the human rights and environmental due diligence procedures to be adopted in the forthcoming financial year and an assessment of the effectiveness of actions taken in the previous financial year. This report should be submitted within six months of the end of the financial year and each year after that. This requirement intends to ensure the accountability for the planned and implemented due diligence measures.
- 22 Subsection (2) articulates the elements that must be included in the report.
- 23 Subsection (3) clarifies that all public departments, agencies, and bodies are also required to publish a report as outlined in subsection (1).

- 24 The independent review of the UK Modern Slavery Act 2015 concluded that government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance and impose sanctions for non-compliant companies that have not published the modern slavery statement.⁹ By drawing on experience and these recommendations, subsection (4) states that failure to develop, implement, publish, and submit to the registry website a timely and accurate human rights and environmental due diligence report result in civil penalties for commercial organisations within the Bill.
- 25 Subsection (5) provides the right to information from a commercial organisation or public authority to whom this Clause applies about how it prevents actual or potential human rights and environmental harm. Subsection (6) clarifies the grounds where a request for information may be denied.
- 26 Subsection (7) introduces an offence for commercial organisations, to whom this Clause applies, to knowingly or recklessly cause its report under subsection (1) or answer to an information request under subsection (5) to include any matter that is misleading or false in a material particular including regarding the implementation of the due diligence plan.
- 27 Within the execution of this Clause, the imposition of a fine for a misleading report shall not preclude other forms of liability or alternate causes of action.

Clause 6: Public authority procurement duties

- 28 Clause 6 establishes a duty for public authorities to hold their suppliers up to the standard of this Bill throughout their tender process and subsequent contract management.
- 29 Subsection (1) prohibits public authorities from carrying out procurement from suppliers that do not conduct or have no plans of conducting (within a reasonable time frame) human rights and environmental due diligence, in accordance with the provisions outlined in the Bill.
- 30 Subsection (2) requires public authorities to establish human rights and environmental due diligence requirements for suppliers at the tender stage and establish specific award criteria, practice, or contract performance conditions relating to the implementation of due diligence policies and practices, including provisions for remediation for those affected by human rights and/or environmental harms.
- 31 Subsection (3) sets an additional reporting requirement for public authorities. It would require every public authority to provide a list of current suppliers and those who have been excluded, debarred, or terminated from procurement to the competent regulatory authority annually. This is an additional requirement for their reporting duties set under Clause 5.

Clause 7: Regulatory oversight

- 32 Subsection (1) requires an appointment of a competent regulatory authority to oversee compliance with the Bill. The designated competent authority should be competent in business regulation, international human rights law, and environmental standards.
- 33 Subsection (2) articulates the duties of the regulatory authority, including providing guidance on due diligence approaches and best practices, setting reporting requirements for the implementation of Clause 5, hosting a publicly available registry website listing all

⁹ Independent review of the Modern Slavery Act: final report (updated 31 December 2021), Full List of Recommendations, Recommendation 30 and 31, available at: <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report/independent-review-of-the-modern-slavery-act-final-report-accessible-version>

organisations subject to Clause 5 with their respective reports, and enforcing compliance with the Bill.

- 34 Subsections (3) and (4) equip the regulatory authority with investigatory powers to fulfil its duties, to act on its own accord or after receiving complaints, to take the decision that the Bill was violated and issue a civil sanction, and to refer criminal offences to the Crown Prosecution Service.
- 35 Subsection (5) ensures that any decision of the regulatory authority to take or not to take action concerning an investigation or complaint does not preclude, suspend, delay, or substitute potential civil liability actions under Clause 8.

Clause 8: Civil liability

- 36 Subsection (1) and (4) establish that commercial organisations, regardless of the location of the harm, can be held liable due to their failure to prevent human rights and environmental harms concerning their operations, products, and services, those of their subsidiaries, and throughout their value chains.
- 37 Subsection (2) establishes a legal defence for commercial organisations if the commercial organisation can prove that it took all appropriate and reasonable steps to prevent harm, including but not limited to conducting reasonable human rights and environmental due diligence.
- 38 Subsection (3) clarifies that commercial organisations can be held jointly and severally liable for the same harm.
- 39 Subsection (5) provides victims with effective remediation for the harms, including compensation, rehabilitation, satisfaction, guarantees of non-repetition, and other appropriate remedies. Injunctive orders and other preventive measures are also included.
- 40 Subsection (6) clarifies that commercial organisation affected by an order under subsection (5) may apply to an appropriate court to set the order aside or to vary it.

Clause 9: Liability of directors and persons responsible

- 41 Clause 9 introduces a collective responsibility for the board of directors or its equivalent management body for the commercial organisation's compliance with the Bill.
- 42 Subsection (2) clarifies the responsible persons for the human rights and environmental due diligence of a commercial organisation.
- 43 Subsection (3), along with subsection (5), establishes criminal liability for the board of directors for cases where the commercial organisation does not conduct human rights and environmental due diligence in a financial year or knowingly and recklessly provides false or incomplete information in a material particular in its human rights and environmental due diligence reporting under Clause 5.
- 44 Subsection (4) provides legal defence for the subject persons, if they can prove that they took all reasonable steps to ensure that the relevant provisions were complied with and informed the regulatory authority as soon as practicable after becoming aware that the commercial organisation report under Clause 5 contains information that was false or incomplete in a material particular.

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- 45 Subsection (6) clarifies that a person guilty of an offence under this Clause is also liable to be disqualified as a director under the Company Directors Disqualification Act 1986.

Clause 10: Penalties and notices

- 46 Clause 10 establishes penalties and official notices for commercial organisations which breach their obligations under Clauses 2 or 5.
- 47 Under subsection (1), the penalties imposed by the regulatory authority include:
- a. monetary fines amounting to up to 10% of a global turnover,
 - b. official compliance notices requiring specific actions within a stated period to ensure an offence or breach does not continue or happen again,
 - c. official restoration notices requiring specific actions within a stated period to secure restitution of the early position, as far as this is possible,
 - d. exclusion from participation in procedures for the award of supply, works, or service contracts by public authorities for a period of up to five years, and
 - e. order of investigation and adjudication costs.
- 48 Subsection (2) provides an alternative measure in addition to or instead of penalties set out in subsection (1). The regulatory authority is also authorised to accept enforcement undertaking from the commercial organisation to undertake corrective behaviour in line with international law or accept a third-party undertaking to compensate those affected by human rights violations.
- 49 Subsection (3) introduces penalties against public authorities that breached their obligations under Clauses 2, 5, or 6, including an appropriate fine and orders for remediation.

Clause 11: Criminal offence

- 50 Clause 11 establishes a criminal offence for commercial organisations if certain offences (set out in subsection (2)) are committed by a person associated with the commercial organisation to obtain or retain business or advantage for the commercial organisation. The committed offence needs to be connected to the commercial organisation's activities.
- 51 Subsection (4) provides legal defence for commercial organisations, if they can prove that at the time of the act of an associated person, it was not reasonable to expect the commercial organisation to have any due diligence procedures in place; or that it took all reasonable steps to prevent the offences under subsection (2) from occurring, including but not limited to conducting human rights and environmental due diligence in all the circumstances.
- 52 Subsection (5) clarifies that for the implementation of this Clause, an act includes an omission.

Clause 12: Regulations

- 53 This Clause clarifies the regulation process under this Bill and requires the Secretary of State to introduce statutory instruments containing regulations before Parliament within six months of the day on which this Bill is passed.

Clause 13: Extent, commencement, and short title

- 54 This Clause sets out that the Bill extends to England and Wales, Scotland and Northern Ireland and may be cited as the Commercial Organisations and Public Authorities Duty (Human Rights and Environment) Act 2024. The Bill is intended to come into force on the day on which it is passed.

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