

# The draft EU Due Diligence Regulation

Implications for domestic producers in the UK

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Our work ranges from international policy development to the practical implementation of requirements on the ground, with a particular focus on turning policy into practice. Our extensive and up-to-date knowledge of the international context ensures that our work for companies, organisations and governments is set within an appropriate framework. At the same time, we are able to bring a wealth of current practical experience to policy development processes and debates.

The ProForest team is international and multilingual and has a broad variety of backgrounds, ranging from industry to academia and NGOs. This allows us to work comfortably in many types of organisations, as well as in a range of cultures. We have in-house knowledge of more than 15 languages, including Mandarin, Hindi, Malay, French, Spanish and Portuguese.

ProForest was established in 2000. The company expertise covers all aspects of the natural resources sector, from agricultural commodities and forestry to conservation, supply chain management and responsible investment.

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# ProForest

# 1. Introduction

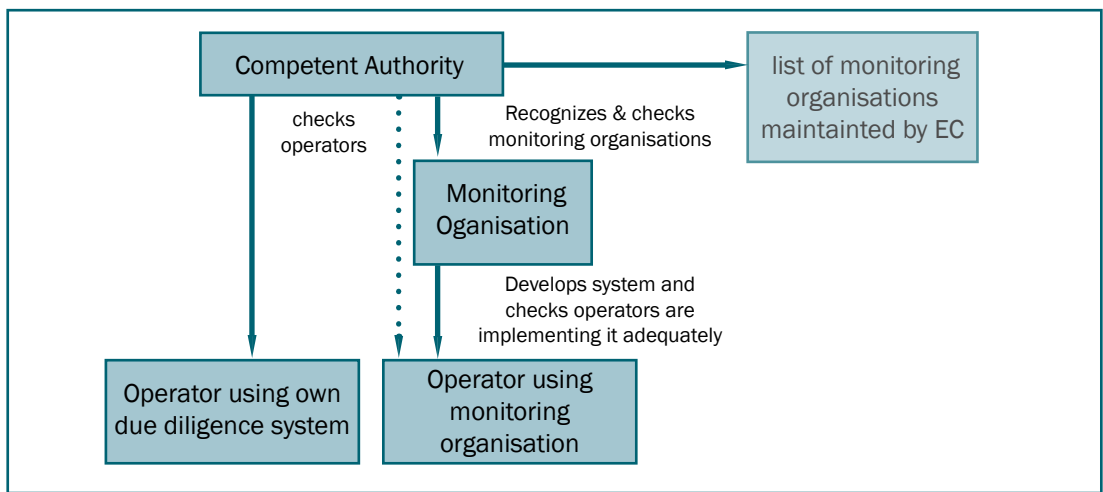
As part of the EU Forest Law Enforcement, Governance and Trade programme, draft EU legislation is being proposed which would require any **operator placing timber or timber products on the EU market** for the first time to operate a due diligence system to minimise the risk of the timber originating from an illegal source.

The regulation recognises two possible routes to the implementation of a due diligence system (see Figure 1.1):

- An operator can design and implement its own system.
- An operator can use a recognised ‘Monitoring Organisation’ to provide and monitor the system (see Box 1.1).

The whole system will be overseen by a designated Competent Authority in each member state (see Figure 1.1) which is required to monitor operators directly and to approve and monitor Monitoring Organisations.

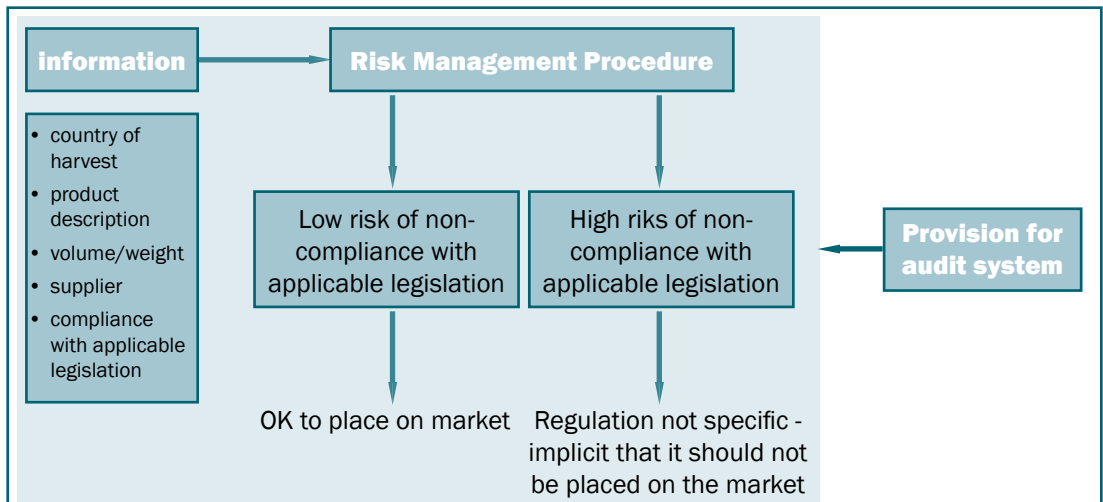
**Figure 1.1**  
Schematic representation of the main actors in the proposed due diligence approach



The due diligence system which each operator is required to implement includes several elements (see Figure 1.2):

- **Information** on the products being sold including a description of the product (trade/scientific name), country of harvest and volume or weight;
- **Information on compliance with ‘applicable legislation’** in the country of harvest;
- **A risk management system** which identifies timber that carries a high risk of illegality (defined as a failure to comply with applicable legislation in the country of harvest) and ensures that adequate information is available to show it is from a legal source;
- **Provision for audit** of how the system functions.

**Figure 1.2**  
Schematic representation of the proposed due diligence system which each operator must operate



**Box 1.1**  
Monitoring Organizations



The draft Due Diligence Regulation includes the possibility for operators to utilise a ‘Monitoring Organisation’ which is defined as:

*‘a legal entity or a membership-based association or federation that has the legal capacity to monitor and ensure the application of a due diligence system by the operators certified as making use of such systems’.*

In addition to being a legal entity, the Monitoring Organisation must:

- Establish a due diligence system which meets the requirements of the Regulation;
- Require any operator it ‘certifies’ to use the due diligence system;
- Monitor all the operators it ‘certifies’ to ensure that they are using the due diligence system;
- Take appropriate disciplinary action against any operator that fails to implement the due diligence system properly.

The intention is that existing organisations such as Trade Federations or Associations of Forest Owners/Primary Processors could become Monitoring Organisations and provide the due diligence system for their members – thus reducing the burden on individual operators.

To become a Monitoring Organisation the organisation must apply to the Competent Authority in a Member State, providing information on its statute, its staff and the system it intends to operate. Based on this the Competent Authority must decide (within three months) whether to grant recognition. All recognised Monitoring Organisations must be regularly monitored by the Competent Authority who can withdraw recognition if any problems are identified. The European Commission will keep a list of all recognised Monitoring Organisations.

The draft legislation will apply to both imported and domestically produced timber and timber products. This document presents a discussion of implications for domestic (UK) producers.

## 2. The requirements of the draft regulation and UK producers

The purpose of the regulation is to minimise the risk that any timber sold in the EU originated from a forest where management or harvesting was illegal. Therefore, for domestically-produced timber there are two areas of legislation which must be considered (see Box 2.1 for an overview of the UK forest sector):

- **Existing domestic legislation related to forest management and harvesting** (‘applicable legislation’) which must be implemented in the forest to ensure that there is no risk of the timber coming from an illegal source. The ‘applicable legislation’ which must be implemented will differ for each Member State since it is the existing domestic legislation of each country (or state or region if applicable) which must be implemented;
- **The proposed legislation in the Due Diligence Regulation** requiring:
  - a) Information showing that the risk of illegal management or harvesting in the forest was very low;
  - b) Implementation of a due diligence system to manage the risk of placing illegal timber on the EU market.

This requirement is the same for each Member State since it is an EU Regulation.

**Box 2.1**  
Overview of the UK domestic forest and timber sector



**Forests**

- The total forest (woodland) area in the UK is 2.84 M ha which is approximately 11.7% of land area.
- The total area is divided between conifer (mainly exotic plantations except for Scots Pine forests) and broadleaf:
  - Conifer: 1.63 M ha
  - Broadleaf: 1.21 M ha
- 107,000 holdings ca. 77% < 10 ha (mainly farm & other private woodlands)

**Timber production**

- Production sawn wood: 3.1 M m3
- Production panels: 3.5 M m3
- Production paper products: 5.2 M tonnes

## 2.1 The operator placing timber on the market

Currently it is unclear whether the ‘operator placing the timber on the market for the first time’ (and therefore responsible for operating a due diligence system) will be the forest owner selling standing timber or logs, or the primary processor. If standing timber and logs are included in the list of ‘timber products’ found in the Annex to the regulation then it will be forest owners. If they are not included and the regulation applies only to processed timber, then it will be the first point of transformation and distribution/use as these volumes enter the market.

Depending on which approach is adopted, forest owners will have to implement part or all of the legal requirements (see also Figure 2.1):

- **Compliance with ‘applicable legislation’ in the forest** (ie relevant UK legislation on forest conservation, management and harvesting): This will have to be implemented by all forest owners whether or not they are considered ‘operators’. However, this is already required in the UK and is considered to be normal practice. Therefore, the introduction of the DD Regulation will not require any change.
- **Evidence of compliance with ‘applicable legislation’**: in order to demonstrate that there is a low risk of non-compliance with applicable legislation in the forest, there will need to be evidence of legal compliance. This will be necessary whether it is the forest owner operating the due diligence system or the primary processor or trader. In the former case, forest owners will need to be able to provide adequate evidence to the Competent Authority monitoring due diligence systems and in the latter to customers who are collecting information to demonstrate legality as part of their own evidence gathering for their own due diligence.
- **Full due diligence system**: This will only be required by the ‘operator’ so forest owners will only need to implement a full system (this includes information, a risk management system and provision for audit) if they are identified as the operator. Otherwise, these elements will have to be put in place by the primary processor or trader. This is discussed in Section 2.2.

**Figure 2.1**  
Implications of being the operator placing timber on the market for the first time for forest owners and primary processors

Operator placing timber on the market	implications for Forest owner/ manager	implications for Primary processor or trader
Current situation No-one as operator	Comply with all applicable UK laws relating to forest management and harvesting	No requirement
With DD Regulation: <b>Forest Owner</b> as operator	Comply with all applicable UK laws relating to forest management and harvesting  Establish a due diligence system in line with EU Due Diligence Regulation  This will include having evidence of compliance with applicable UK law	No requirement
With DD Regulation: <b>Primary processor or trader</b> as operator	Comply with all applicable UK laws relating to forest management and harvesting  Provide evidence on compliance with applicable UK law to customer	Establish a due diligence system in line with EU Due Diligence Regulation  This will require evidence from forest manager to confirm low risk of illegality

## 2.2 The due diligence system

The purpose of the due diligence system proposed is to minimise the risk of illegal timber being placed on the EU market. Therefore, the function of the system is to ensure that any timber being sold came from legally managed and harvested forests. As outlined above, the current version of the draft regulation outlines a due diligence system which includes requirements for:

- Information on the products being sold (see 2.2.1);
- Information on compliance with applicable legislation in the forest (see 2.2.2 and 2.2.3);
- A risk management procedure (see 2.2.4);
- Provision for audit of how the system functions (see 2.2.5).

Each of these will need to be provided by the operator – including forest owners if they are identified as operators. The discussion below looks at the implications of this.

### 2.2.1 Information requirements

Currently the type of information which must be available according to the draft regulation includes:

- Description: it is not yet certain what this will mean but is likely to be species (trade and/or Latin name) and type of product
- Country of harvest
- Volume and/or weight
- Where applicable, details of operator who supplied the timber

The implications for domestic producers of providing this information are outlined in Table 2.1. None of the proposed requirements appear particularly difficult for UK domestic producers and no significant changes to current approaches would be needed. The only exception is the group of forest owners who do not routinely keep records of their harvest activities (generally those with small woodlands where any activity is intermittent)<sup>1</sup>.

However, in this case a felling license may be adequate to provide the information as discussed further in Section 3.

**Table 2.1**  
Potential mechanisms for information provision by different operators

	Requirement in draft regulation	Forest owner as 'operator'	Primary processor as 'operator'
	Description of product (species/trade name)	Many forest owners keep records of what is harvested. For those to do not, particularly small forest owners, it may be possible to use the information provided by felling license or in management plans	Should be straightforward to include in sales information from forest owner or harvester to consumer
	Country of harvest	Clearly UK - no issue	Clearly UK - no issue
	Volume and/or weight	Many forest owners keep records of the volume of timber harvested. If not, may be able to use estimates provided in felling licences or management plans	Should be straightforward to include in sales information
	Operator who supplied the timber	Clearly forest owner - no issue	Should be straightforward to include in sales information

1. In this context it is relevant that the current discussions of the Regulation are coalescing around the idea that information needs to be 'made available', which would not necessarily mean that individual operators would need to hold and collect the information themselves.

## 2.2.2 Defining applicable legislation

The draft regulation stipulates that the due diligence system must deliver **information on compliance with requirements of the ‘applicable legislation’**. Applicable legislation is defined as *‘the legislation of the country of harvest regulating forest conservation and management and the harvesting of timber as well as legislation on trade in timber or timber products related to forest conservation and management and to the harvesting of timber’*.

It is not yet clear how countries will be expected to define what constitutes applicable legislation<sup>2</sup> relevant to forest conservation, harvesting and management. However early indications suggest that there may be a desire to use the same scope of legal requirements as the FLEGT VPAs which includes:

- Compliance with legal requirements covering: forest management; environment; labour and welfare; health and safety; other tenure and use rights; and CITES
- Legal use rights
- Payment of royalties and taxes

In the case of the UK, however, the 2009 draft revision of the UK Forestry Standard (UKFS) includes a summary of the relevant laws applicable to the UK forest sector which provides an appropriate definition of ‘applicable legislation’ for the UK. The laws identified are summarised in Table 2.2.

**Table 2.2**  
Main legislation relevant to the forest sector in the UK, together with associated implementing agencies

Legal requirement	Implementation
Forestry Act - felling and thinning	Forestry Commission, through felling licences
EIA (Forestry) Regulations - afforestation, reforestation, forest roads and quarries	Forestry Commission
Tree Protection Orders / Conservation Orders - development control	Local Authorities
Plant Health - movement of timber and provisions for access for inspection	Forestry Commission
Forest Reproductive Material - regulations covering sources of seeds for replanting	Forestry Commission
Habitat and Species Directives	Natural England, Scottish Natural Heritage, countryside Council for Wales
Designated Sites eg SSSI, Ramsar	Forestry Commission - grants and licencing
Water (priority and protected freshwater species)	Natural England, Scottish Natural Heritage, countryside Council for Wales
Pollution Legislation	Environmental Agency, Scottish Environment Protection Agency
Environment Act	Environmental Agency, Scottish Environment Protection Agency
Water Resources Act	Environmental Agency, Scottish Environment Protection Agency
Aerial Application of Pesticides	Environmental Agency, Scottish Environment Protection Agency
Application of Waste	Environmental Agency, Scottish Environment Protection Agency
Schedule of Ancient Monuments	English Heritage, Historic Scotland, CADW
Rights of Way - CRoW (Eng), Land Reform Act (Scotland)	Forestry Commission and Local Authorities
Employment Legislation - 12 elements, details found in forest and people guidelines	Health and Safety Executive
Occupiers Liability Act (duty of care toward people on your land)	Health and Safety Executive

2. The Due Diligence Regulation only applies to existing national legislation and does not require new laws to be enacted if any of these areas are not addressed by existing laws.

### 2.2.3 Information on compliance with applicable legislation

As discussed above, it is already a requirement for all forest owners to comply with all law relevant to forest conservation, management and harvesting so this is not affected by the introduction of a requirement for due diligence.

However, the requirement to provide *evidence of compliance* with applicable legislation is new. A key concern for the UK is how this requirement can be achieved in a way which is robust and cost-effective but which does not result in additional unnecessary bureaucracy.

The forest sector in the UK can be roughly divided into four types of productive forest areas with somewhat different implications for each:

- **State-owned forests** (Forest Enterprise, Forest Commission Wales, Northern Ireland Forest Service): Managers of state forests will need to undertake a review of their internal systems to assess their ability to be able to demonstrate legal compliance. Where any weaknesses or gaps are identified these need to be addressed in order to strengthen the robustness of the internally applied systems. However, as the national forest estate in England, Scotland and Wales is already certified, it is likely that this will provide adequate evidence without further work (see Box 2.1).
- **Large forest holdings** (eg wildlife charities, private estates etc): Generally such forests are managed by professional forest managers and many are already certified. Therefore, it is unlikely that the regulation will mean much real change for such organisations because they are likely to have management systems in place already to ensure legal compliance and can use these as a basis for providing information. In addition, many are already certified (see Box 2.1). Nevertheless, it may be useful to provide some specific information on the regulation, see where existing frameworks can support provision of information on legal compliance and ensure that managers are aware of what is required.
- **Forests managed by professional managers** (agents, management organisations etc): Many small and medium forests in the UK are managed by professional management companies or agents. It is assumed that these professionals already aim to ensure that forests are managed legally on behalf of the owners and that most have systems which would allow information on compliance to be provided. Again it may be useful to provide some specific information on the regulation, see where existing frameworks can support provision of information on legal compliance and ensure that professional management companies and agents are aware of what is required.
- **Small woodlands**: There are many small woodlands in the UK which are not managed by agents, management organisations or professional forest managers. These are generally managed on an ad hoc basis, with activities only occurring intermittently or not at all. This group is the least likely to have any system which could provide evidence of legal compliance and any additional requirements are likely to be seen as a disincentive to management.

In summary, it is envisaged that the proposed requirements for evidence of legal compliance will not be a particular problem for the national forest estate or for large or professionally managed forest in the UK. However, the requirements could create issues for small, informally managed woodlands. This is a key concern since Forestry Ministers have made it a major aim of the Forestry Commission to encourage more owners to bring their small woodlands back into management. This is discussed further in Section 3.

**Box 2.1**  
The Potential  
Role of  
Certification



Forest certification is already a well-established process which is widely used in the forest products sector. It is therefore important to be clear about the links between certification and the due diligence requirements. There are several parts of a certification scheme, each of which is discussed below.

**Forest Management Certification** is applied *in the forest* and verifies management practices against the requirements of a standard. The major certification systems (Forest Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification Schemes (PEFC)) both include requirements for legal compliance within the standard. Therefore, Forest Management Certification is likely to be a useful mechanism for providing a *reasonable assurance that applicable laws were implemented in a certified forest* and therefore provides evidence that risk is low for timber products from that forest.

**Chain of Custody Certification** is applied to *operations in the supply chain* such as processors or manufacturers. It provides assurance that any claims about certified timber being made by a processor or manufacturer are genuine. Therefore, it is useful in providing assurance of low risk for particular *certified products*. However, it does not provide any assurance about any uncertified timber being used by the certified operation. As a result, an operation with a Chain of Custody Certificate could also be handling wood from very high risk sources without any controls in place. Therefore, Chain of Custody Certification is useful in providing evidence of low risk for specific certified products but does not provide a due diligence system.

**The Controlled Wood Standard** was developed by the FSC certification scheme. It requires an operation to put in place a system to minimise the risk of timber from illegal or other controversial sources being purchased and used. Therefore, it is quite similar to the requirements of the due diligence regulations and may be a useful basis for developing a due diligence system which meets the requirements of the Regulation. Other similar approaches may be developed by other certification schemes. Each one, including the FSC Controlled Wood standard will need to be assessed against the final requirements of the Regulation to see whether the system provides an adequate due diligence system.

## 2.2.4 Risk management procedure

Risk management is defined by the draft regulation as *‘a set of measures and procedures carried out by operators in order to minimise the risk of placing illegally harvested timber and timber products on the market’*. Further text is being negotiated but it is likely that there will be a requirement to:

- Assess the level of risk of timber being from an illegal source;
- Put in place measures to limit the risk of illegal timber being placed on the market.

If the **forest owner** is the operator then the risk management procedure is effectively exactly the same as the internal system to ensure legal compliance and to have evidence available to demonstrate this discussed in Section 2.2.3 above. The implications for small forest owners is discussed further in Section 3.

If the **primary processor or trader** is the operator then their risk management procedure will need to include a mechanism for collecting information on both the product (see Section 2.2.1) and compliance with applicable legislation (see 2.2.3) from the forest owner and assessing this to ensure it is adequate. For the forest owner this will mean having information available and providing it with each sale of timber. As discussed above, for certified forests evidence of certification should be adequate.

## 2.2.5 Provision for audit

The draft regulation also includes a requirement that there is a ‘provision for audit’ of the due diligence system (see Box 2.2 for a discussion of the different types and levels of checking and verification required by the proposed regulation). It is still unclear exactly what the final requirement will be and, as it applies to the due diligence system (and not to compliance with applicable legislation) it makes a significant difference whether it is the forest owner or the primary processor that becomes the operator required to operate a due diligence system.

If it is the primary processor who becomes the operator then this requirement will not apply to forest owners. However, if forest owners do become the operator then it will apply and consideration will need to be given to how it is achieved.

**For certified operations** it may be possible to use the certification audit as a proxy. As discussed above, if forest owners are the operators then the risk management procedure will effectively be the same as the system to comply with applicable legislation which would be checked by any certification audit. Therefore, although the auditors are not auditing a due diligence system per se, the audit should be sufficient to provide adequate assurance to the Competent Authority that the risk of illegal timber being placed on the market is being minimised.

**For uncertified operations**, there is the option to use a Monitoring Organisation which should provide an audit function for all operators using its system. For uncertified forests which do not use a Monitoring Organisation, particularly small woodlands, an alternative will be needed which does not entail additional costs or bureaucracy. There is already discussion within the Forestry Commission about introducing independent audits with respect to the implementation of the UKFS including both felling licenses and forest management plans. While this is a separate system, it may nonetheless be able to provide a basis for the due diligence system.

**Box 2.2**  
Different Types  
and Levels of  
Checking and  
Verification



It is important to differentiate the various types and levels of checking and verification that are required to comply with the proposed regulation (see also Figure 1.1)

**Checking compliance with applicable legislation in the forest**

In order to provide evidence of compliance with applicable legislation it is necessary to have some form of checking or verification that the law is complied with. The draft Regulation is not specific on how this should be done but the risk management component of the due diligence system operated by each operator will need to clarify this. In practice there are a range of ways that compliance with applicable legislation can be checked: It could include self-verification by the forest manager, checks undertaken by government or other official agencies, verification undertaken by the trader or processor or independent audits including both ‘legality verification’ audits and forest certification. In each case the purpose of the verification is to confirm that applicable legislation has been complied with and, in general, the higher the risk of non-compliance the greater the need for rigor and independence in the verification. For UK producers this would be

straightforward as they are both harvesting and operator (or directly supplying the operator).

**Auditing of the Due Diligence system being used by the operator**

There is a specific requirement in the proposed regulation for an audit of the due diligence system being operated. This would entail checking the way information is received and processed by the operator and the actions taken in response to information received. As the draft regulation is currently worded such audits could be internal first party audits carried out by the operator on their own system, or audits with greater independence carried out by third parties. Where a Monitoring Organisation is used they will be responsible for checking the due diligence system of operators they approve which may be adequate meet requirements of the Regulation, depending on the detail of the requirements agreed.

**Auditing of the whole system by the Competent Authority**

In each Member State the Competent Authority will be responsible for monitoring and auditing the whole system.

### 3. Implementation for small woodlands in the UK

As discussed in Section 2, it is crucial to find ways to ensure that small, informally managed woodlands can meet the requirements of the due diligence regulation without creating any additional barriers or disincentives.

There are two possible approaches to addressing this<sup>3</sup>:

**A *de minimis* approach:** an approach which the UK will explore in finalising the regulation is the potential for providing an exemption for operators putting less than a certain volume or value of product onto the market in any year – these operators would not be subject to the requirements of the due diligence regulation. Any *de minimis* approach would need to apply equally to all forms of timber and timber products irrespective of country of origin.

If forest owners are the operators then this may be very useful in providing an exemption for small producers but it is not yet clear if it will be accepted, nor what value or volume of products could feasibly be used. Furthermore, if processors or traders are the operators, then small producers would still need to be provide them with evidence of compliance with applicable legislation. Therefore, it cannot be the only option explored at present.

**Provision of a due diligence system using the existing framework:** an alternative approach is to develop a mechanism which will deliver the requirements based on existing systems, particularly the felling license, without placing any additional burden on small forest owners. Therefore, this section examines how existing systems could be used to meet the requirements with minimal additional work by small forest owners.

As discussed in Section 2, there are four elements of the requirements which need to be considered. Whether or not each one has to be implemented by the forest owner depends on whether it is the forest owner or the primary processor that is identified as the operator responsible for operating a due diligence system (see Section 2.1). The elements are:

- Information on the products: this will be required from the forest owner whether the forest owner or processor is the operator since it is information which must be fed into the risk management system;
- Information on compliance with *applicable legislation*: this will be required from the forest owner whether the forest owner or processor is the operator since it is information which must be fed into the risk management system;
- A risk management procedure: this is only necessary for the operator so will only have to be implemented by forest owners if they are operators;
- Provision for audit of the due diligence system: this is only necessary for the operator so will only have to be implemented by forest owners if they are operators.

This is summarised in Figure 3.1 and each element discussed in more detail below.

#### 3.1 Information requirements

The main system which is used by the Forestry Commission to ensure legal compliance in the UK is the felling license (see Box 3.1). Therefore, in discussion with the Forestry Commission and other key agencies, a review was undertaken of the extent to which the felling license could be used to provide adequate general information and evidence of compliance with applicable legislation without the individual forest owners having any unnecessary additional burden.

3. A third approach – having the Forestry Commission act as a Monitoring Organisation – was explored but subsequently rejected for two reasons. Firstly, Monitoring Organisations must have mechanisms for accepting and rejecting operators within their system and it is not clear how Forestry Commission could manage its regulatory functions while rejecting non-compliant operators. Secondly, there is a requirement for Monitoring Organisations to be approved by a Competent Authority and this approval may then be subject to challenge (potentially even by other member states) which would be a difficult situation for a regulatory authority.

## 3.1.1 Provision of general information

The draft regulation requires a description (probably product type and/or species) and an estimate of volume and/or value. The felling license requires managers to provide information on the type of felling (final fell, thinning etc), the species and an estimate of volume.

Currently forest owners are not required to keep a copy of the felling license once felling has been carried out. This may be acceptable if the copy kept by the Forestry Commission is considered to provide access to the information. Alternatively, it may be possible for the Forestry Commission to require forest owners to keep a copy of the felling license and associated documentation – contracts with contractors, transport documents, correspondence with neighbours etc – for a set period (eg 2 years).

### Box 3.1 The Felling License



This is the primary mechanism used by the Forestry Commission to regulate the felling of trees in the UK. With few exceptions, it is an offence to fell trees without a licence. (In any calendar quarter however, it is permitted to fell up to 5 cubic metres on your own property without a license, as long as no more than two cubic metres of that are sold.<sup>4</sup>)

A felling licence will normally include conditions that the felled area must be restocked and the trees maintained for a period not exceeding ten years.

The Forestry Commission will only grant a felling licence if the applicant can demonstrate that it meets the requirements of the UK Forest Standard, which includes the list of applicable laws in Table 2.2 above.

An applicant must supply the Forestry Commission with

- A map showing the proposed felling area (site and/or compartment)
- Details on type of operation (eg. purpose of felling)
- Details on the species to be felled and estimate of volume
- Detail on how the trees to be felled are marked
- Proposed date of felling

The Forestry Commission then consults internally and with any relevant local authorities or other agencies with statutory powers in relation to the requirements of the UKFS and relevant legislation. If it appears to meet all requirements then the application is posted on a public 'Register of Grant Schemes

and Felling' for a 28 day consultation period. If there is no objection within 28 days, the application is approved. The same procedure must be followed by large and small forests alike.

#### Field checking compliance with felling license conditions

The extent of checking that legal requirements are met in practice was discussed with Forestry Commission staff from England, Scotland and Wales which indicates that:

- *Where a license is issued 'stand alone' (ie unconditional):* if there are no restocking conditions attached to the felling license, there is no systematic checking of the felling work actually undertaken on the ground.
- *Where a license is 'conditional':* the procedures say that 100% field checking should be undertaken by a forest officer, however anecdotal evidence suggests that around 40% checking actually takes place, selected through a risk based approach. Where a non-compliance is uncovered, a warning notice is issued, followed up by an enforcement notice. Failure to respond to the enforcement notice can lead to prosecution.
- *Where a license is issued as part of a grant scheme:* it is an EU requirement that a minimum of 5% of sites are inspected. Official data suggests that in the UK where grant money is being given for (felling and) restocking, closer to 35% of the sites are visited by woodland officers on a risk-related and unannounced basis.

## 3.1.2 Provision of evidence of compliance

Whether or not forest owners become operators, they will need to be able to provide evidence of compliance with applicable legislation – either for their own due diligence system or for that of the processor or trader to whom logs are sold.

4. Whilst such fellers do not need a licence they are still expected to obey UK law.

In order to use the Felling License as the basis for providing this evidence it will be necessary to demonstrate that where there is a Felling License in place there is very likely to be legal compliance (ie an extremely low risk of non-compliance with applicable legislation). Therefore, the extent to which this is the case and to which legal compliance is checked by the Forestry Commission and other relevant agencies was reviewed.

- **Requirement to comply with applicable legislation:** The felling license already requires forest owners to comply with the UK Forest Standard which in turn specifies the need for compliance with applicable legislation (see Section 2.2.2). It may be useful to make this slightly more explicit on the felling license documentation (eg via a box which forest owners are required to tick to confirm an understanding that the law must be implemented and their intention to do this) but this should be straightforward.
- **Checking planned activities meet applicable legislation:** As outlined in Box 3.1, the system currently in place in the UK aims to check that the planned activities all meet the law. Forestry Commission staff check aspects relevant to forestry law and also whether there are potential impacts where the legislation concerned is the responsibility of other agencies (eg rare species, ancient monuments, public rights of way etc). Where this is the case, the application is forwarded to the agency responsible. Overall the system appears to be systematic and robust.
- **Checking field activities:** As set out in Box 3.1 Forestry Commission staff undertake some field checks of activities in the forest with a particular focus on potential problems. However, they do not systematically visit all sites where activities are taking place. Furthermore, the main focus of field visits is on the specific activity which was the subject of the felling license and on issues which come under the jurisdiction of the Forestry Commission. Commission staff would not routinely be proactively checking compliance with other laws though if they observed a serious breach they would inform the relevant statutory authority, but this is unusual.

Brief discussions indicate that other regulatory agencies (eg the Health and Safety Executive, the Environment Agency) tend to respond to particular issues as they arise (eg reported accidents, spills) rather than undertake routine monitoring.

Thus the picture that emerges from an initial review is that the approach taken to checking and monitoring legal compliance in the forest is sensible but rather unsystematic and somewhat limited in scope. Forestry Commission staff spoken to indicated that in their experience there are few significant non-compliances with the requirements of the UK Forestry Standard and applicable legislation but systematic documented evidence to confirm this is limited.

Based on the information above, it was concluded that the Felling License has considerable scope for providing the basis for evidence of compliance with applicable legislation using a risk-based approach (ie showing that the risk on non-compliance with legislation is acceptably low), but that some additional work will be needed. In particular,

1. Minor revisions to the application for a Felling License to demonstrate more explicitly that the application meets the requirements of the UK Forestry Standard and applicable legislation.
2. Further review of existing enforcement and monitoring activities to establish exactly what information is routinely available to support claims of low risk of non-compliance with applicable legislation, and whether minor changes to systems and approaches could provide better information.
3. Because the level of routine checking of compliance in the field is currently relatively low, it may be necessary to undertake further work to independently evaluate the actual frequency of non-compliance with applicable legislation. This could be provided by a one-off 'snapshot' study of a sample of randomly selected Felling Licenses by an independent organisation (eg a certification body) to confirm that applicable legislation is being routinely implemented in practice.

### 3.2 Risk management procedure

As discussed in Section 2.2.4 forest owners will only need to have a risk management procedure if they are the operators putting the timber on the market. In this case, as discussed, for forest owners the risk management procedure is effectively equivalent to the system for ensuring compliance with applicable legislation so provided that the mechanism described in 3.1.2 above is adequate, this should also provide a risk management procedure.

### 3.3 Provision for audit

This will only be an issue if forest owners become the operators. If this is the case then it may be challenging for small forest owners unless a very practical approach is adopted. There are a number of possibilities:

- **Use of a Monitoring Organisation:** if an appropriate Monitoring Organisation exists this may be an option. However, experience in the UK indicates that the owners of small, informally-managed forests are reluctant to join schemes of this sort (eg group certification approaches).
- **Self-assessment:** small forest owners tick a box in the Felling License application to confirm compliance with the law.
- **Sample assessment:** As discussed in Section 2.5, it may be possible to use independent audits commissioned by the Forestry Commission to look at a small sample of felling licenses to meet this requirement.

In practice it may be that a combination of these approaches will be the best route to provide an adequate mechanism to ensure that small domestic producers in the UK meet the requirements of the Due Diligence Regulation without any additional bureaucracy or creation of barriers to good management.

It should be noted that a requirement for independent third-party audit of the due diligence system of all operators would be extremely burdensome for small forest owners if they were operators.