

Briefing



Proposal for new mandatory human and labour rights and environmental due diligence legislation

December 2024

Introduction

The TUC brings together more than 5.5 million working people who make up our 48 member unions. The TUC and unions are campaigning for new legislation that would give organisations¹ greater legal responsibility for preventing labour and human rights abuses and environmental harms in their global value chains.² We welcome Labour's commitment in the National Policy Forum to "assess the best way to prevent environmental harms, modern slavery and human and labour rights abuses in both private and public sector supply chains including effective due diligence rules," in government.³ The TUC recognises the government's intention to deliver on this commitment, as stated by Baroness Jones in the House of Lords: "The Government is clear on the need to prevent environmental harms and human and labour rights abuses in both private and public sector supply chains and will take an evidence-based approach as we assess the best ways to achieve this...We will consult with stakeholders as we consider any further action."⁴

New legislation would lead to better regulation of global value chains and promote decent work and respect for workers' rights in the UK and globally. It would signal a fresh approach from this government that respecting labour and other human rights and protecting the environment is central to sustainable and inclusive growth, and that growth will not come at the expense of harms down global value chains. This fresh approach would help restore the UK's reputation on the global stage.

The TUC has long campaigned for legal reform to create a regulatory environment that encourages high standards of business behaviour and good employment practices. Our current corporate governance system prioritises the rights and interests of shareholders over those of other stakeholders, contributing to short-termism and business models based on the exploitation of

¹ Organisations goes beyond commercial organisations and extends to public authorities or other organisations who have global value chains capable of giving rise to human rights impacts. The term "commercial organisation" is used in the Bribery Act and the Modern Slavery Act, "Relevant commercial organisation" is defined in section 7(5) Bribery Act as: "(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), (b) any other body corporate (wherever incorporated) which carries on a business, or part of business, in any part of the United Kingdom, (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom, and, for the purposes of this section, a trade or profession is a business." Relevant "other organisations" could be expressed in legislation to include public authorities, including government departments, the NHS, local authorities, schools and higher education, state-owned business enterprises, and bodies such as export credit agencies and those undertaking public procurement, and all entities within the meaning of section 6(3) Human Rights Act. This approach has precedent, government departments are expressly included in the Australian Modern Slavery Act.

² The value chain connotes the full process a company performs in order to add value to a good or service, including production, manufacturing, sales, marketing, warehousing and logistics and not just their supply. Put another way, it covers all the steps that go into a final product or service, often starting with the extraction of raw material in the primary sector and finishing with delivery of a service or sale of a good in the tertiary sector. An organisation's value chain encompasses the steps that come before or after its engagement with a relevant good or service. A value chain is global where these steps take place in more than one country.

³ Labour Party (2024) National Policy Forum document

⁴ UK Parliament (30 July 2024), 'Business: Environment Protection and Human Rights', available at: <https://questions-statements.parliament.uk/written-questions/detail/2024-07-30/HL483>

workers, both in the UK and in global value chains, and environmental destruction. The TUC has campaigned for worker directors to comprise one third of the board of companies with more than 250 staff to bring a workforce perspective to corporate decision-making. We also call for reform of directors' duties so that directors would be required to promote the long-term success of the company as their primary aim, removing the priority currently given to the interests of shareholders. Our proposed reformulation would require directors to take account of the interests of the workforce and investors; relationships with suppliers, the community and customers; and impact on the environment and human rights. These reforms would help to create incentives for high standards of corporate practice. However, directors' duties are not directly enforceable (other than by minority shareholders), so while they are important in creating a positive business environment, they would not make businesses liable for the harms that they cause or contribute to. We believe that due diligence legislation would complement reformed directors' duties, and would provide a mechanism to support their effective implementation.

The TUC has long called for stronger regulations and adherence to international labour standards to protect workers' rights throughout global value chains. We are represented on the board of the Ethical Trading Initiative, the steering board for the UK National Contact Point for Responsible Business Conduct and the International Labour Organisation's (ILO) Governing Body. The TUC worked closely with the European Trade Union Confederation during the passage of the EU Corporate Sustainability Due Diligence Directive, and we work alongside the UK's Corporate Justice Coalition, which is also calling for new legislation.⁵

Previously, the TUC played a key role in lobbying British businesses to support and fund the Bangladesh Accord on Fire & Safety and has worked directly with brands sourcing textiles from Leicester to gain union access to factories to directly challenge and remedy instances of exploitation.

Through our charitable arm, TUC Aid,⁶ we have supported training on collective bargaining and leadership skills for women workers in Bangladeshi garment supply chains, and supported Guatemalan banana workers to help end anti-union violence and secure new workplace agreements.

Summary of proposal for new legislation

Based on legal advice commissioned by the TUC, the most effective way for the UK to establish and enforce organisations' global value chain responsibilities would be to enact robust mandatory due diligence legislation which:

- is comprehensive in scope, covering core labour rights, local employment laws, human rights and environmental protections
- imposes duties on businesses and other organisations (including public sector bodies) without restriction, and applies throughout global value chains
- is premised on core legal duties to respect and prevent adverse human rights and environmental impacts
- imposes substantive due diligence obligations on organisations

⁵ Corporate Justice Coalition <https://corporatejusticecoalition.org/>

⁶ TUC Aid <https://www.tuc.org.uk/campaigns/tuc-aid-supporting-working-people-around-world>

- would reverse the burden of proof, to increase access to justice
- provides for a tripartite regime of civil, regulatory and criminal liability in order to provide an accessible and effective deterrent
- enables trade unions to play a vital role within the due diligence process and use of accountability mechanisms
- allows for joint and several liability (more than one organisation being legally accountable for the harm) on the establishment of breach in civil claims.

Organisations that failed to carry out their legal obligations would be legally liable for harms relating to breaches of human rights, employment and labour rights and environmental standards.

The TUC believes there should be strict, joint and several liability in UK domestic supply chains, for core rights such as sick pay, holiday pay and the National Minimum Wage. Strict liability means liability which does not depend on actual negligence or intent to harm. This would mean that any contractor/employer in the value chain would be strictly liable (no defence) for core employment rights breaches in UK domestic value chains.

New legislation could be based on the 'failure to prevent' model, which is used in the Bribery Act, the Criminal Finances Act and the Economic Crime and Corporate Transparency Act. This model was recommended by Parliament's Joint Committee on Human Rights and identified as legally feasible by the British Institute of International and Comparative Law.⁷

Why is this legislation needed?

- Voluntary approaches to corporate responsibility have failed to protect human and labour rights and the environment in global value chains. Millions of workers have been left in poverty and precarious work because organisations have failed to take responsibility for the people whose work contributes to their products, operations and services. This lack of accountability has led to the disproportionate exploitation of women and migrant workers.
- The UK has committed to implementing internationally recognised standards, such as the United Nations Guiding Principles on Business and Human Rights (UNGPs)⁸, which include rights set out in the ILO's Declaration on Fundamental Principles and Rights at Work⁹, and promoting the OECD guidelines for multinational enterprises relating to responsible business conduct.¹⁰ The UN Guiding Principles include the corporate responsibility to respect human rights. Implementing new mandatory human and labour rights and environmental due diligence legislation would go some way in supporting the UK to meet its international obligations.

⁷ Corporate Justice Coalition (2024), 'A Business, Human Rights and Environment Act', available at: <https://corporatejusticecoalition.org/wp-content/uploads/2024/04/BHREA-Environment-and-Climate-Briefing-2024.pdf>

⁸ United Nations (2011) 'UN Guiding Principles on business and human rights', available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

⁹ International Labour Organisation (2022) 'ILO Declaration on fundamental principles and rights at work', available at: <https://www.ilo.org/declaration/lang--en/index.htm>

¹⁰ UK Government 'UK National Contact Point (UK NCP) for the OECD's guidelines for multinational enterprises', available at: <https://www.gov.uk/government/groups/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-guidelines>

- To date, the UK government has failed to meet its obligations. The 'Transparency in Supply Chains' provisions under the Modern Slavery Act have been an abject failure. The former government made it voluntary for employers to report on modern slavery risks in their supply chains. This weak approach, without any sanctions, has led to many companies flouting the law with impunity. The Corporate Justice Coalition¹¹ highlights that: "The [independent] review [of the Modern Slavery Act] notes serious limitations in the implementation of the TISC clause. The legislation is "light on detail" on reporting, an estimated 40 per cent of eligible companies are not complying with the legislation at all, and there are no penalties for non-compliance."¹²
- In addition, nearly £330 billion was spent on public procurement from the private sector in 21/22,¹³ but a lack of a robust legislative framework to ensure that public procurement supports decent work has meant that taxpayers' money has been spent without due regard for the impact on workers in global value chains.
- Deregulation and liberalisation of the global economy have enabled businesses to adopt strategies that rely on offshoring, the fast movement of capital, and complex, fragmented supply chains that often end in countries with low wages and weak/poorly enforced labour laws. This, in turn, has enabled many businesses to avoid their employment responsibilities and maximise profits. In addition, unequal power relations between the Global North and Global South, linked to legacies of colonialism, are replicated throughout global value chains – as we see in the production of commodities such as cocoa, and the extraction of natural resources.
- Businesses have increasingly relied on social audits to monitor conditions in their supply chains and meet their due diligence obligations, despite widespread evidence of their ineffectiveness. Because social audits generally rely on external auditors making periodic visits, they are not equipped to capture accurate or timely information on employment practices and workforce experiences. For example, research has shown their inadequacy in detecting gender-based violence at work.¹⁴ Audits failed to notice safety defects prior to the collapse of the Rana Plaza factory in Bangladesh which killed 1,134 workers, and also in the case of the Ali Enterprises factory fire in Pakistan which killed at least 250 workers.¹⁵ Environmental, Social and Governance (ESG) ratings are also unreliable, as they generally rely on company reporting combined with other publicly available information. Many public sector buyers rely on supplier self-reporting, ESG risk ratings or certificates to assure compliance with requirements, but these may not provide an accurate picture. Electronics Watch¹⁶ has documented cases of workers' passports being confiscated, violations of freedom of association, and poor health and safety in supply chains.¹⁷

¹¹ Corporate Justice Coalition, formerly known as CORE

¹² CORE (2019) 'Briefing for Westminster Hall Debate on the independent review of the Modern Slavery Act', available at: [Modern-Slavery-Act-Review-Debate-Briefing.pdf \(antislavery.org\)](https://www.antislavery.org/Modern-Slavery-Act-Review-Debate-Briefing.pdf)

¹³ UK Parliament, House of Commons Library (2024), 'Procurement statistics, a short guide', available at: <https://commonslibrary.parliament.uk/research-briefings/cbp-9317/>

¹⁴ Human Rights Watch (2019) 'Combating sexual harassment in the garment industry' available at: https://www.hrw.org/news/2019/02/12/combating-sexual-harassment-garment-industry#_ftn1

¹⁵ Clean Clothes Campaign (2023), 'Fig Leaf for Fashion' available at: <https://cleanclothes.org/file-repository/figleaf-for-fashion-brief.pdf>

¹⁶ Electronics Watch is an industry-independent, not-for-profit organisation which helps public buyers to work together to promote and protect the rights of workers in global supply chains.

¹⁷ Electronics Watch (2023) 'Annual Report 2023', available at: <https://storymaps.com/stories/5ad783f97c2540c6aca5856d4d08ed3a>

- In the automotive industry, final assembly companies at the top of the chain are cutting costs,¹⁸ with UK unions highlighting that this is leading to pay suppression in the UK and down the chain. In the transition to electrification, some suppliers in the UK will be at greater risk from closure.¹⁹ New mandatory labour and human rights and environmental due diligence legislation will lead to increased supply chain transparency and accountability. This could help with building more resilient UK supply chains and support a Just Transition. Increased supply chain transparency and accountability will also support workers and their unions to identify the risk of some companies moving production to countries where production costs and labour standards are lower.²⁰

The ITUC's 2024 Global Rights Index indicates that almost nine out of ten countries worldwide violated the right to strike, while about eight in ten countries denied workers the right to bargain collectively for better terms and conditions. This reflects a multi-year trend of worsening workers' rights.²¹ The ITUC also stresses that the current model of trade "keeps millions of workers in poverty and precarious work" and "ruthlessly exploits the labour of women and migrants".²²

Legislation to increase corporate accountability will help prevent some of these harms, examples of which are summarised below.

Tesco

Tesco continues to face a landmark lawsuit in the UK brought by 130 Burmese migrant workers who were employed within its supply chain. The claimants worked in a garments factory in Thailand which manufactured clothing for Tesco's own F&F brand and are represented by Leigh Day.

The workers allege that they typically worked a minimum of 99 hours per week, sometimes had to work through the night so the factory could fulfil urgent purchase orders, and that they only had one day off per month. The majority of workers report being paid less than £4 a day, while the Thai minimum wage was approximately £7 for an 8-hour day. Many were paid according to the number of items they produced and did not receive overtime pay, with these circumstances leaving the workers vulnerable to overtime exploitation and often in a cycle of debt. It is alleged that the conditions in the factory were hazardous and abusive, and many of the workers also lived in dormitory accommodation within the factory compound for which the rent was paid from their wages. The workers were reliant on their employment at the factory for their immigration status, and some allege that their immigration/work permit documents were withheld by the factory managers. Others claim that the factory retained control of bank accounts into which wages were transferred, and that there were then shortfalls in the cash payments actually distributed to the workers.

¹⁸ Reuters (2024) 'Volkswagen doubles down on cost cuts to try to revive margins', available at: <https://www.reuters.com/business/autos-transportation/volkswagens-profit-falls-restructuring-costs-weigh-first-half-2024-08-01/>

¹⁹ Unite the Union is proposing the creation of a risk register at company level to be disclosed to the union, or industry level, to be disclosed to the government.

²⁰ BBC News (2023) 'Vauxhall-maker warns Brexit may force it to close UK factory', available at: <https://www.bbc.co.uk/news/business-65612295>

²¹ ITUC (2024) 'Global Rights Index', available at: https://www.ituc-csi.org/IMG/pdf/2024_ituc_global_rights_index_en.pdf

²² ITUC (2022) 'Supply chains', available at: <https://www.ituc-csi.org/supply-chains>

The claimants are seeking compensation for physical and psychological personal injuries caused by the working conditions and alleged forced labour, damages for false imprisonment and compensation for their related economic losses.

The claim is being brought in (the equivalent under Thai law of) negligence and, groundbreakingly, includes Intertek, a global supply chain assurance provider, as a co-defendant with the allegation that it failed to conduct adequate audits of the factory on behalf of Tesco. It is claimed that effective audits would have prevented the claimants from suffering the harm to which they were exposed.

Legal proceedings have been issued in the High Court and are expected to be served on each defendant during 2025.²³

Supermax

In December 2022, the Department of Health was forced to change how it assesses the risk profile of potential suppliers following a landmark legal case which challenged the government's decision to include Malaysian glove manufacturer, Supermax, as an approved provider, despite long-standing claims of labour abuses at the company's factories in Malaysia.²⁴ The case represented current and former workers who alleged debt bondage, physical abuse and forced labour while working at Supermax.²⁵

Boohoo Group PLC (Boohoo)

In 2020, an independent review into allegations of unacceptable working conditions in Leicester-based factories making clothes for Boohoo confirmed: serious health and safety violations; significant numbers of workers were paid below the national minimum or living wage; employees did not have proper contracts; and working hours were frequently excessive and inadequately remunerated.²⁶ A legal opinion to assess whether Boohoo could have been held liable under a new UK mandatory human rights and environmental due diligence law indicates that without Boohoo taking action to mitigate potential harms, it seems likely that liability would have been established as a result of a determination that the harms were directly linked to its products.²⁷

Transition minerals/materials

²³ Leigh Day (Jan 2024) – information provided to the TUC

²⁴ Channel 4 News (1 December 2022), 'Department of Health forced to scrap how it sources medical gloves for NHS after supplier accused of modern slavery', available at: <https://www.channel4.com/news/department-of-health-forced-to-scrap-how-it-sources-medical-gloves-for-nhs-after-supplier-accused-of-modern-slavery>

²⁵ The Independent (19 May 2022) 'Government to face court hearing over links to PPE supplier accused of modern slavery', available at: <https://www.independent.co.uk/news/uk/politics/ppe-supplier-high-court-uk-supermax-b2082105.html>

²⁶ T. Otty QC & Naina Patel (2021) 'In the matter of the findings of a review into the Boohoo Group PLC's Leicester Supply Chain and Liability under the Mandatory Human Rights Due Diligence/Failure to Prevent' Law, Opinion', available at: https://media.business-humanrights.org/media/documents/Boohoo_Legal_Opinion_1.pdf

²⁷ Corporate Justice Coalition (2023) 'Bridging the Gap: How could a UK business, human rights and environment Act have made a difference?', available at: <https://corporatejusticecoalition.org/resources/reports/bridging-the-gap-how-could-a-uk-business-human-rights-and-environment-act-have-made-a-difference/>

The production of minerals such as lithium, graphite and cobalt could increase by nearly 500 per cent by 2050 to meet the growing demand for clean energy technologies.²⁸ At present, evidence indicates a concerning trend in human rights violations and environmental harms linked to critical minerals and clean energy technology. The Business and Human Rights Resource Centre Critical Minerals Tracker for 2024 shows a marked increase in labour rights violations and worker deaths, compared to previous years. This is alongside widespread violations of land and Indigenous Peoples' rights, and environmental standards. IndustriALL global union highlights that the increasing demand for transition minerals will deeply affect the global workforce and risks further entrenching global inequalities.²⁹ As much as 97 per cent of solar panels could contain materials made by persecuted Uyghur workers who are trapped in forced labour schemes.³⁰ The Democratic Republic of Congo (DRC) holds 60 per cent of the world's cobalt supply, but many mines are unregulated - with the use of child labour and many miners working without basic health and safety equipment.³¹ The US Department of State has also expressed concern about the role that the illicit trade and exploitation of certain minerals from the African Great Lakes Region continues to play in financing the conflict in eastern DRC.³²

Seasonal agricultural workers in the UK

The seasonal worker scheme, which offers people from overseas a six-month temporary visa, was introduced in 2019 to address labour shortages that were expected to be worsened by Brexit. It has expanded rapidly, from 2,500 visas in 2019 to 55,000 in 2024. The programme has been plagued by allegations of worker mistreatment. In March 2023, the media uncovered³³ systematic bullying and abuse on several UK farms.

Nineteen farm inspection reports produced by the Home Office between 2021 and 2022 revealed the scale of abuse faced by seasonal workers. The documents summarise interviews and findings of inspectors who visited farms.

Nearly half (44 per cent) of the 845 workers interviewed as part of the inspections raised welfare issues including racism, wage theft and threats of being sent back home. On most of the inspected

²⁸ World Bank (2020) 'Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition' <https://www.worldbank.org/en/topic/extractiveindustries/brief/climate-smart-mining-minerals-for-climate-action#:~:text=A%20new%20World%20Bank%20Group,demand%20for%20clean%20energy%20technologies>

²⁹ Business and Human Rights Resource Centre (2024) Critical Minerals Tracker, available at:

<https://www.business-humanrights.org/en/from-us/transition-minerals-tracker/>

³⁰ Unison (2022) 'Dirty energy: sourcing solar panels without Uyghur forced labour', available at:

<https://www.unison.org.uk/content/uploads/2022/08/Clean-dirty-energy-1.pdf>

³¹ The Guardian (3 January 2021) 'Child labour, toxic leaks: the price we could pay for a greener future',

available at: <https://www.theguardian.com/environment/2021/jan/03/child-labour-toxic-leaks-the-price-we-could-pay-for-a-greener-future>

³² US Department of State (2024) 'Statement of Concern Related to Certain Minerals Supply Chains from Rwanda and Eastern Democratic Republic of the Congo Contributing to the Ongoing Conflict', available at:

<https://www.state.gov/statement-of-concern-related-to-certain-minerals-supply-chains-from-rwanda-and-eastern-democratic-republic-of-the-congo-contributing-to-the-ongoing-conflict/>

³³ <https://www.thebureauinvestigates.com/stories/2024-01-12/uk-government-breaching-international-law-with-seasonal-worker-scheme-says-un-envoy/#:~:text=The%20programme%20has%20been%20plagued,as%20a%20recent%20parliamentary%20inquiry.>

farms, there were allegations of mistreatment or discrimination and more than 80 per cent of workers interviewed on the three most complained about farms raised an issue of some sort.

The findings also reveal unlawful recruitment fees are more common than previously thought, with workers from six countries saying they had paid recruiters as much as £7,500 for jobs in the UK. The charging of these fees is illegal in the UK.

Because of the former government's inadequate approach, violations of human and labour rights in the global operations, services and products of UK companies persist.

International comparators

The UK is lagging behind a number of countries that have or will introduce legislation to protect human rights in global value chains.

For example:

- France was the first country to pass a human rights and environmental due diligence law, the Law de Vigilance in 2017. It covers risks and harms to health and safety, human rights and the environment and applies to companies with a head office in France and over 5,000 employees.
- Norway's Transparency Act came into force in July 2022. It covers fundamental rights and 'decent working conditions' within Norway, and in terms of the value chain it applies to companies' own operations, its subsidiaries, all suppliers and subcontractors.
- Germany's Supply Chain Due Diligence Act came into force on the 1 January 2023. It prohibits disregard of occupational health and safety protections and withholding of adequate wages mandated by national legislation within Germany. In the value chain, the law applies to all products and services of an enterprise, and includes the actions of direct and indirect suppliers.
- The EU's Corporate Sustainability Due Diligence Directive was adopted in April 2024, following years of campaigning and advocacy by the European Trade Union Confederation, its affiliates and civil society. It is the world's first set of legally binding rules to hold EU and third country companies and their subsidiaries accountable for violations of human rights and harms to the environment. It places a duty on companies over a certain threshold to carry out human rights and environmental due diligence in their operations and across their value chains – to identify, mitigate, prevent and remedy adverse impacts. Trade unions and workers' representatives will be involved in developing and implementing effective due diligence policies, plans and strategies in companies and their subsidiaries, throughout the value chain.³⁴ This regulation can be built on in the UK, strengthening the approach, for example to include all businesses, reversal of the burden of proof, and a different approach to civil liability.³⁵

What are the benefits of better value chain regulation?

We believe there are many reasons for enacting legislation that promotes respect for human and labour rights and environmental standards, and which makes organisations legally accountable for preventing labour and human right impacts and environmental harms in their global value chains:

³⁴ European Trade Union Confederation (2024) 'Workers' rights secured throughout the supply chain', available at: <https://etuc.org/en/pressrelease/workers-rights-secured-throughout-supply-chain>

³⁵ Business and Human Rights Resource Centre (2024), 'CSDDD – A timid step forward in the fight against corporate human rights abuse

- the UNGPs state that business enterprises should respect human rights, which means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved³⁶
- mandatory due diligence legislation opens up multiple avenues for workers to seek remediation including compensation, and justice for harms, which would include the impacts of union busting. Remedy is a key pillar of the UNGPs³⁷
- mandatory due diligence legislation can potentially help in situations where a company goes insolvent, in cases of phoenixing or where the employer disappears, as workers still have a course of action to enforce their rights
- widened employer liability in value chains would make contractors, including public sector contracting authorities, more diligent and careful in choosing their subcontractors; we believe mandatory due diligence legislation would lead to more insourcing and direct employment and therefore contribute to achieving the government’s commitment to oversee the biggest wave of insourcing in a generation³⁸
- widened employer liability would strongly incentivise the lead contractor to risk assess and tackle potential breaches of employment standards in their value chains, thus raising standards among subcontractors.

What rights would be protected under new mandatory human and labour rights and environmental due diligence legislation?

In keeping with international best practice, new legislation should cover:

- human rights protected in the Universal Declaration of Human Rights;³⁹ the International Covenant on Economic, Social and Cultural Rights;⁴⁰ the International Covenant on Civil and Political Rights;⁴¹ all international human rights treaties that the UK has ratified as well as rights which form part of customary international law or international humanitarian law. This includes rights ranging from the rights to life, health, privacy, work, freedom from slavery, and an adequate standard of living

³⁶ United Nations (2012) 'The corporate responsibility to respect human rights, an interpretative guide', available at: https://www.ohchr.org/Documents/publications/hr.puB.12.2_en.pdf

³⁷ See example: Electronics Watch (2023) 'Principles for Worker Driven Remedy', available at https://electronicswatch.org/new-worker-driven-remedy-principles_2635094.pdf

³⁸ Labour (2024) 'Labour’s Plan to Make Work Pay: Delivering A New Deal for Working People', available at: <https://labour.org.uk/updates/stories/a-new-deal-for-working-people/>

³⁹ United Nations (1948) 'Universal Declaration of Human Rights', available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁴⁰ United Nations (1966) 'International Covenant on Economic, Social and Cultural Rights', available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

⁴¹ United Nations (1966) 'International Covenant on Civil and Political rights', available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

- labour rights set out in: (i) the ILO Declaration on Fundamental Principles and Rights at Work⁴² and reflecting the core ILO Conventions at a minimum,⁴³ and (ii) labour laws in the state where the worker is/was based
- environmental protections set out in: (i) environmental laws, regulations and administrative practices in the states in which the organisations operate; (ii) relevant international environmental agreements and principles; and (iii) with respect to contributions to climate change, the Paris Agreement and treaties under the UN Framework Convention on Climate Change.⁴⁴

What does due diligence look like?

A central pillar of mandatory human and labour rights and environmental due diligence legislation is a duty that commercial and other relevant organisations must undertake human rights and environmental due diligence to prevent adverse human rights and environmental impacts.

The core components of a due diligence process are:

- **identification:** organisations must identify and assess actual and potential adverse human and labour rights and environmental impacts arising from their domestic and international operations, products and services in their value chain, including for subsidiaries and sub-contractors
- **risk assessment:** placing a minimum duty on organisations to conduct and publish annual risk analyses, in consultation with independent trade unions and other key stakeholders. In practice, this would not be an absolute duty but would be subject to a reasonableness or proportionality threshold.
- **integration:** organisations must integrate due diligence into their policies and procedures and create a risk-based management system that is enshrined in the same
- **preventive measures:** organisations must take appropriate measures to avoid, prevent and mitigate adverse human and labour rights and environmental impacts they cause or contribute to in their domestic and international operations, products and services, including of its subsidiaries in its value chain

⁴² International Labour Organisation (2022) 'Fundamental Principles and Rights at Work', available at: <https://www.ilo.org/resource/conference-paper/ilo-1998-declaration-fundamental-principles-and-rights-work-and-its-follow>

⁴³ International Labour Organisation Conventions, available at: <https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12000:0::NO::>

⁴⁴ Environmental harm should be defined broadly within a new law as: adverse impacts on the environment and/or ecosystems including but not limited to impacts on the climate, e.g., through greenhouse gas emissions and the destruction or degradation of sinks; biodiversity loss; degradation of land, marine and freshwater ecosystems; deforestation; air, water and soil pollution; on the transition to the circular economy, including through damage to reusability and recyclability, such as contamination of waste streams with hazardous substances. This includes harm resulting from cumulative impacts. Adverse environmental impacts shall be interpreted on the basis of the best available science and in line with relevant internationally recognised environmental principles and conventions, locally applicable environmental laws, regulations and administrative practices. Key principles include the prevention, precautionary, rectification at source, and polluter pays principles. International conventions include, in particular, the Paris Agreement and the Kunming-Montreal Global Biodiversity Framework. <https://corporatejusticecoalition.org/wp-content/uploads/2024/04/BHREA-Environment-and-Climate-Briefing-2024.pdf>

- **grievance and complaints procedures:** organisations to establish internal grievance and complaints procedures - a valuable feature of grievance and complaints procedures, which could be set out in legislation or guidance, is that independent workers' associations, trade unions and relevant stakeholders would have standing to submit complaints on behalf of affected individuals or groups
- **monitoring:** organisations must monitor and review the effectiveness of their due diligence policies, procedures, plans and measures on an annual basis or when there is a material change in circumstances
- **communication and reporting:** organisations must: (i) communicate due diligence policies, procedures, assessments, plans and measures to stakeholders, including the organisation's workers and their trade unions; and (ii) publish a forward-looking due diligence plan describing the procedures to be adopted in the forthcoming financial year, and an assessment of the effectiveness of actions taken in the previous financial year; a central government registry could also be created where the public can access organisations' due diligence assessments and plans
- **climate change:** organisations must ensure their business/operating models and strategies are consistent with the long-term temperature goal of 1.5°C, report on their emissions reduction objectives, and the plans put in place to achieve these. To ensure the alignment between organisations' climate change actions and social and human rights obligations, organisations that face principal climate change risks should also be required to involve their workforces and major stakeholders in this planning process. Organisations must carry out due diligence to this effect, with the possibility of attracting civil liability and regulatory enforcement
- **trade union involvement:** legislation should enable and provide for the participation and consultation of an organisation's workers and their trade unions; affected individuals/communities, and relevant NGOs in the development, implementation and supervision of organisations' due diligence policies, plans and measures
- **remediation processes:** organisations must take remedial action to bring to an end to, minimise and remedy adverse human rights and environmental impacts when they arise. Appropriate remedial measures could include payment in damages, contractual assurances that partners will remedy impacts, and/or provision of investments and support to facilitate remediation.

Which employers should be in scope?

Based on our legal advice, the definition of organisations should go beyond commercial organisations and extend to public authorities or other organisations that have global value chains capable of giving rise to human rights impacts.

The UNGPs apply to all states and all businesses, both transnational and others, regardless of their size, sector, location, ownership and structure.⁴⁵

The TUC has long argued for strong procurement conditionalities. This entails strengthening the statutory procurement framework to place proactive requirements on all suppliers to adhere to robust decent work, equalities, governance and responsible business practice standards, and public

⁴⁵ United Nations (2011) 'UN Guiding Principles on Business and Human Rights', op cit

authorities to carry out due diligence to ensure workers' rights are protected throughout value chains. It also means being clear that suppliers with a track record of bad employment practice will be unable to access public contracts, and that transparency and accountability will also be at the heart of all stages of procurement and contract management.

For SMEs, due diligence requirements should be proportionate to the size of the business and severity of its actual and potential human rights impacts, as well as its leverage over its suppliers.⁴⁶ Larger business enterprises should provide support to SMEs in their value chains to meet their due diligence obligations, and technical assistance could be provided by a regulator.

Can we have stronger protections for workers in UK domestic supply chains?

It would be feasible to establish a system of strict joint and several liability in the UK for key workers' rights while enacting robust mandatory human and labour rights and environmental due diligence legislation in relation to global value chain responsibilities.

As stated, the TUC advocates for a system of strict, joint and several liability in UK domestic supply chains for core rights such as sick pay, holiday pay and the National Minimum Wage.

Which workers would be protected by this new legislation?

An organisations' duties would extend to the whole of the value chain.

The duties in any mandatory human and labour rights and environmental due diligence legislation should extend to impacts of: (i) organisations' domestic and international operations; (ii) including the operations of their subsidiaries and controlled undertakings; and (iii) including impacts arising from products and services in their value chains.

Mandatory human and labour rights and environmental due diligence legislation would apply to all workers in global value chains.

What happens if an organisation breaches its mandatory human rights due diligence duties? What is their liability? And how is the legislation enforced?

Mandatory human and labour rights and environmental due diligence legislation should provide that organisations will be liable for harm, loss and damage arising from failures to respect human rights or prevent adverse human rights and environmental impacts of their domestic and international operations, products and services in their value chains.

Effective new legislation should contain a tripartite accountability regime, providing for civil liability, regulatory oversight and criminal liability.

Civil claims

Who can bring a claim?

⁴⁶ It is also worth noting that contract value thresholds used to determine the applicability of procurement regulations during public procurement, as per the Procurement Act 2023.

Firstly, the right of interested persons, such as trade unions, to seek injunctive relief⁴⁷ in courts to order an organisation to comply with its duties under mandatory human and labour rights and environmental due diligence legislation, provided it has formally requested the organisation to comply and it has failed to do so within three months.

The claimant would have to establish they have been affected by an adverse human rights or environmental impact arising out of the organisations' own operations (in the case of the duty to respect) or out of the operations of its subsidiaries or products and services in its value chain (in the case of the duty to prevent). Trade unions, independent workers' associations and relevant stakeholders would have standing to make a civil claim on behalf of claimants, if the latter choose to pursue civil liability. Independent trade unions could also have standing to bring a case where rights relating to unions have been breached.

The burden would then shift to the organisation to establish a justification or that it had taken reasonable and appropriate measures to prevent the relevant impact.

Is there an employer defence under this legislation?

Compliance with due diligence obligations would be an important factor in determining whether organisations had complied with their duties to respect and prevent human rights impacts. A failure to have procedures in place and integrate due diligence into an organisation's policies would impair an organisation's ability to defend a claim. Identification of a risk or impact without sufficient further action could be detrimental to an organisation's defence, as would an unreasonable failure to identify a risk or impact. However, taking effective and timely measures to prevent, mitigate and remediate impacts would significantly strengthen an organisation's prospects.

Liability would depend on whether a court determines there has been a breach of the qualified duties to respect or prevent harm. The burden of proof would take the following approach, which is consistent with claims under the Human Rights Act and Equalities Act.

Regarding an organisation's defence, the UN Guiding Principles and Third Revised Draft of the UN Binding Treaty on Business and Human Rights state that conducting due diligence will not automatically provide a defence. But, compliance with due diligence obligations would be an important factor in determining whether organisations had complied with their duties to respect and prevent human rights harms.

What is joint and several liability and can it work with a mandatory human and labour rights and environmental due diligence system?

Joint and several liability could, in principle, attach to any duty where breaches involve multiple perpetrators. That could be a breach of obligations in mandatory labour and human rights and environmental due diligence legislation or otherwise. As mentioned, the civil liability model could be constructed to provide for injunctive relief and claims for damages. Where an individual establishes breach and causation in an individual claim for damages, there are good reasons why this should attract joint and several liability.

⁴⁷ Injunctive relief - also known as an injunction

Regulatory oversight

The second component of the tripartite accountability regime should be robust regulatory oversight. Mandatory human and labour rights and environmental due diligence legislation should have a regulator fit for purpose and with the following powers:

- initiate investigations and mandatory inspections
- compel disclosure
- impose compliance notices and sanctions
- fines up to a certain threshold or calculated as a percentage of turnover
- exclusion from public procurement for a period of time
- there may also be complementary sanctions that can be imposed against companies and directors as a matter of company law.

Criminal liability

In addition to regulatory oversight, mandatory human and labour rights and environmental due diligence legislation could consider making organisations and their senior managers subject to criminal sanctions for violations of their duties to respect and prevent adverse human rights and environmental impacts where the impacts involve serious or “gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law”.