



Department for
Business, Energy
& Industrial Strategy

GOVERNMENT RESPONSE TO CONSULTATION ON FUEL RESILIENCE MEASURES

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April 2018

GOVERNMENT RESPONSE TO CONSULTATION ON FUEL RESILIENCE MEASURES

The consultation document and Impact Assessment can be found on the BEIS section of GOV.UK: <https://www.gov.uk/government/consultations/downstream-oil-supply-resilience>

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Any enquiries regarding this publication should be sent to us at downstreamoilteam@beis.gov.uk

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General information

Purpose of this consultation

Issued: 17 April 2018

Enquiries to:

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Consultation reference: [document name]

Territorial extent:

Measures are proposed for the UK. Note that the proposed initial industry-wide measure (see sections 3.61 – 3.77) would be a reserve tanker fleet which would be for Great Britain only.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

This Government response summarises all responses. It includes the list of names and organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the [Government's Consultation Principles](#).

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: beis.bru@beis.gov.uk

Overview

Government is committed to ensuring that the UK has secure and reliable energy supplies. This is essential to underpin the successful, competitive and open economy as set out in the Industrial Strategy¹. In October 2017, BEIS launched a consultation on possible new measures which would apply to companies operating in the downstream oil sector in order to maintain the security of fuel supply to consumers. The consultation asked for views on the proposals to improve fuel supply resilience.

Context

- 1.1. The downstream oil sector comprises over 200 companies involved in the refining, importing, distribution and marketing of petroleum products. The sector plays a key role in our energy security, supplying products that are vital to our economy and our way of life. In particular, petroleum-based fuels provide 98% of the energy for the transport sector. Furthermore, the sector estimates it supports the employment of over 150,000 people and contributes to around 7% of the Exchequer's total receipts.
- 1.2. The UK market for petroleum products is a mature market facing changing patterns of demand in the context of high levels of global competition. The consequence has been:
 - fragmenting supply chains with major oil companies, which used to run vertically integrated well-to-pump operations, divesting themselves of categories of assets or outsourcing some operations; and
 - relatively high utilisation rates and closures of spare or uneconomic capacity. For example, currently there are six UK oil refineries, down from a high of 19 in 1975, and the number of filling stations has declined from around 18,000 sites in 1990 to 8,400 now.

As a result, the sector is efficient, flexible and generally effective in ensuring continuity of fuel supply.

- 1.3. The productivity of the sector will be key to its long term sustainability. Government's recently published ambitious Industrial Strategy White Paper, set out a long-term vision for how Britain can build on its economic strengths, boost its productivity, embrace technological change and boost the earning power of people across the UK. Part of the

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/664563/industrial-strategy-white-paper-web-ready-version.pdf

approach set out in the White Paper included setting four Grand Challenges to put the UK at the forefront of industries of the future.

- Clean Growth
- Ageing Society
- Future of Mobility
- AI & Data Economy

- 1.4. The Grand Challenges, in particular Clean Growth and the Future of Mobility, will have a direct effect on the future of this sector. Government has stated an ambition to end the sale of new conventional petrol and diesel cars and vans by 2040, and the Industrial Strategy's Grand Challenges set out how the UK will seize the economic and social opportunities of moving from hydrocarbon to zero emissions vehicles.
- 1.5. The market expects this will drive a long-term reduction in demand for oil-based transport fuels and change in the product mix due to continued improvements in vehicle fleet efficiency and increased adoption of electric vehicles and other low-carbon modes of transport. Global expansion of refining capacity affects the UK and European fuel sector by reducing margins in the domestic and export markets. As the sector responds to these changes, the ability of the system to protect the continuity of fuel supplies and be resilient to disruptions must be maintained.
- 1.6. DECC (now BEIS) undertook an internal research project in 2014-15, which examined evidence of GB fuel supply system resilience. The research findings took account of information supplied by many fuel companies.
- 1.7. The findings of the research project were:
 - There are a number of major GB infrastructure sites which are essential to regional fuel supply because other local infrastructure is too small to replace them if they cease supply (also referred to as 'single points of failure').
 - Supply chains are very dynamic and can adjust to disruption at these sites over weeks but not immediately.
 - The key constraint is finite logistical capability of pipelines and tankers within the country to distribute fuel to retail sites – not a national lack of access to fuel from UK refineries or imports.
 - A sudden failure at the identified essential sites could not be compensated for immediately and fuel shortages could occur within days.
 - There is a market failure in that, while individual suppliers invest in the resilience of their own supply chain, there is neither a mechanism for them to share the costs of system resilience as a whole.
- 1.8. Government's powers to monitor sector risks, support industry in improving fuel supply resilience and protect fuel supply are currently limited in scope (for example, under the Offshore Safety Act 1992) or, more often, are only available for use during an emergency or crisis situation (the Energy Act 1976 or the Civil Contingencies Act 2004). As a result, powers to direct do not generally allow Government to act in advance to prevent a problem occurring.
- 1.9. Government is also taking action to ensure that the shift to low-emission vehicles is supported by a robust new infrastructure. The Industrial Strategy announced a £400m Charging Infrastructure Investment Fund (£200m from the Government to be matched

by private investors) and £40m research and development funding (matched by industry) for new charging technologies including on-street and wireless projects.

Options considered

Status quo

- 1.10. Doing nothing will expose the UK market to increasing and real, though low probability, risks as the downstream oil sector is forced to become more efficient in the face of declining demand and increasing global competition. These risks carry large economic and social consequences if they were to materialise. The impacts of these risks fall ultimately upon the wider economy and individual consumers to bear. Government does not feel that this is an equitable distribution of risk in an economy and society which has to work for all.

Voluntary approach

- 1.11. We have had a number of discussions with trade associations and individual companies about our analysis of downstream oil resilience and the possible future policy responses. In these meetings major suppliers expressed the view that statutory backing would be needed to deliver any further industry-wide approach to resilience.

Fully regulated sector

- 1.12. Another option that has been considered is regulation of the sector to create a licensing regime and a new regulatory body to enforce standards and mandate resilience solutions. As outlined above, this is the model which applies to the gas and electricity, telecoms and water sectors among others. Unlike these networked sectors, however, there is no existing or natural monopoly in the downstream oil sector and therefore the rationale for an economic regulator of this type is missing. Indeed the evidence is that the sector is highly competitive across most of the national market. The UK has some of the lowest pre-tax fuel prices in the EU and we want consumers to continue to benefit from this. Government therefore has no current intention to introduce this form of economic regulation in the sector.

The proposed approach

- 1.13. Our proposed approach is to put in place a small number of light-touch measures which provide Government with the tools to identify fuel supply risk and support industry in ensuring downstream oil sector resilience. These measures are designed to work within the structure of the fuel supply market. The measures proposed would allow Government additional protections for the infrastructure sites that are essential to maintain regional fuel supplies and would give powers to minimise risks that failures of such sites would result in fuel shortages.

Conducting the consultation exercise

Consulting body

- 2.1. The consultation document on *Downstream Oil Supply Resilience: Proposals to strengthen the resilience of fuel supply to UK consumers* was published on 17 October 2017 and consultation closed on 12 December 2017². It set out possible new measures to maintain the security of fuel supply to consumers.
- 2.2. Government held two stakeholder workshops as well as individual discussions, with all areas of the supply chain (including consumer representatives) during the consultation period. There was a good level of engagement and discussion of the issues raised by the consultation.

Summary of responses

General comments

- 2.3. We received written responses from 28 stakeholders. These included refiners, wholesalers, terminal and storage owners, hauliers, retailers, end users, consumer representatives, and the devolved administrations.
- 2.4. The sector as a whole welcomed the opportunity to comment on and contribute to the formation of the measures through the consultation, as well as Government's recognition of the strategic importance of the downstream oil sector. Many stakeholders were encouraged by Government's intention to adopt a light-touch, market-based approach.
- 2.5. Overall, there were varying levels of support for the measures proposed in the consultation. While some stakeholders felt that the sector's track record of maintaining supply argued against any new measures, none of them presented evidence which over-turned the BEIS analysis that the status quo no longer provided sufficient assurance of the sector's resilience to meet the challenges expected in the coming years.
- 2.6. Respondents emphasised the importance of Government's intention to minimise both market distortions and the burden on industry (administrative or otherwise), and requested clarity on the situations in which Government would use any powers. They also sought reassurance that Government would only use these powers in limited circumstances.

² The consultation can be found at: <https://www.gov.uk/government/consultations/downstream-oil-supply-resilience>

Government Response

Government consulted on proposals that would support improvements to fuel supply through a light-touch but effective package of measures appropriate to the downstream oil sector. The proposals included closer monitoring by the Department of Business, Energy and Industrial Strategy of the fuel supply chain, and support for the industry to work collaboratively to provide alternative supply routes during an unexpected disruption.

Supply disruptions – impact assessment

- 3.1. There are a number of inherent risks to fuel infrastructure, including accidents, severe weather, malicious threats, industrial action, and financial failure. As in other important sectors like this, Government works with fuel suppliers to mitigate such risks. However, not all risk can be prevented. Below, we set out indicative examples of the costs of various lengths of disruption affecting two major types of infrastructure.

Potential Economic Impact of Supply Disruptions (£M in 2015 prices, using Oil Intensity Ratio in 2019)³

(£M)	3 day disruption	6 day disruption	10 day disruption
Refinery or large terminal	100-500	200-950	350-1600
Smaller Terminal or Jetty	50-200	100-450	150-750

1. Consultees are invited to provide further information on the expected cost of fuel supply disruptions. BEIS' analysis of potential economic impacts is discussed further on Page 15 of the Impact Assessment.
2. Consultees are invited to provide comment and evidence on the likelihood for loss of operations or financial failure resulting in loss of supply. BEIS' analysis of risk is discussed on Page 11 and 12 of the Impact Assessment.

³Further information on BEIS' approach to estimating disruption impacts can be found in the Impact Assessment here: <https://www.gov.uk/government/consultations/downstream-oil-supply-resilience>.

Summary of responses

- 3.2. Respondents agreed that a large proportion of national economic activity is dependent on ready supply of petroleum fuels for the transport sector and disruption will have serious impacts on individuals and businesses.
- 3.3. Wholesalers and suppliers suggested the impact assessment might overstate the magnitude of potential economic impact of supply disruptions. However, the respondents did not provide evidence to support an alternative approach, and Government is confident that the analysis fairly reflects the potential economic impacts.
- 3.4. Some respondents, while supportive of the light-touch approach, cited the ability of the sector to manage security of supply issues over recent years, including following the closure of Coryton refinery and referencing the fact that the Downstream Oil Protocol⁴ has only been used once (and briefly), as evidence that there is no material risk of single point failures in the sector. Government agrees that the sector has generally been effective in maintaining supply in recent years. However, we are conscious that the closure of Coryton refinery alongside other closures itself reduced the resilience of the supply system to any further shock. We are aware of a number of near misses, which remain commercially sensitive, and believe that changing market dynamics will increase risks in future, and it is therefore timely to take powers now.

Government response

- 3.5. Government recognises that the UK fuel supply sector is flexible and efficient in dealing with most disruptions to the normal supply chain. However, although the market is resourceful, there are some physical limitations, particularly to the larger possible events. Doing nothing exposes the UK market to real, though low probability risks with high economic consequences.
- 3.6. The Impact Assessment analysis is based on estimating the size of lost supply capacity and consequent economic impacts. The approach taken to estimating the economic impact of lost supply was developed by an external and independent third party, and is considered to be a fair and objective approach. Government remains committed to an ongoing relationship with industry on sharing of evidence and analysis to ensure that conclusions accurately reflect real world scenarios.
- 3.7. The rationale for the Impact Assessment is based on the potential of a low probability but material risk of disruption to the UK fuel supply market from the sudden loss of one of a number of critical supply infrastructure sites. There have been a number of operational and financial events leading to sudden closures of, or disruption at UK oil refineries, terminals and pipelines in recent years (e.g. the fire at Buncefield). The risk of market disruption has increased with the closure of commercially redundant assets, which reduces the ability of the market to replace any lost supply. The proposed measures seek to mitigate this risk through a coherent approach based on collecting evidence and selecting the most efficient solution.
- 3.8. Government acknowledges that individual companies take their own supply resilience very seriously. However, individual companies have no reason or responsibility to

⁴ The official procedure for the supply of fuel in a significant fuel supply disruption between Government and the UK downstream oil industry.

assure the resilience of the system as a whole and have not provided evidence that they have factored whole system resilience into their response planning.

- 3.9. The majority of sales to consumers are one-off transactions at a petrol station. This does not allow for a mechanism for consumers to pay more to insure themselves against fuel supply disruptions. This limits the incentives on suppliers to mitigate these risks if this would increase the pump price. The assessment is that this market failure justifies government action.
- 3.10. Government has considered the views expressed by industry that the Impact Assessment over-estimated the risks. Some responses confused the illustrative examples of the potential magnitude of a fuel supply disruption (page 15 of the Impact Assessment) with the risk adjusted benefits against which the cost-benefit analysis was judged. In neither the written responses nor industry discussions has Government been provided with any evidence suggesting an alternative robust alternative methodology is available. Government's analysis includes sensitivity testing which shows that even in the low scenario (which may underestimate the economic impact) the benefit to cost ratio is substantially in favour of the proposed measures.

Conclusion

- 3.11. Government acknowledges that, to date, industry has been able to manage unplanned disruptions by calling on stocks and supply from elsewhere. However, competition in the downstream fuel market has resulted in the closure of redundant and uncompetitive assets, thereby increasing reliance on the remaining key assets. Our analysis is based on the best available evidence and identifies the risk of disruption from a "catastrophic event" which cannot be alleviated with support from surrounding assets. Probabilities of these events occurring are based on a report produced by Deloitte in 2010⁵ and historical experience. The probabilities outlined in Table 2 and 3 of the consultation Impact Assessment provide probabilities across a national level (i.e. average risk of loss of operations at any individual refinery of 1 in 60 years). No new evidence was submitted suggesting a robust alternative method of assessing these probabilities.
- 3.12. Following evidence and feedback from the consultation and comments from the Regulatory Policy Committee, Government is reviewing the Impact Assessment by providing further indication of the scale of potential impacts from the ownership test, resilience direction and industry schemes, and is also including updated estimates for wages and tanker procurement based on evidence from industry.

General approach to protecting fuel supply resilience

- 3.13. Government consulted on possible new measures to maintain the security of fuel supply to consumers. The proposed measures would apply to companies operating in the downstream oil sector and form part of a wider package of proposed reforms to Government's approach to the protection of critical infrastructure.

⁵ <https://www.gov.uk/government/publications/downstream-oil-short-term-resilience-and-longer-term-security-of-supply>

- 3.14. The proposals are consistent with the Government's objective of ensuring that the UK has secure and reliable energy supplies and Government's ongoing work with the sector on fuel supply resilience.

3. General approach: Do you agree that a package of light-touch measures is the best approach to improving UK fuel supply resilience? If not, please state which approach you consider to be most appropriate, and why. Please provide evidence for any alternative measures and on the scope for voluntary action or full regulation of the sector (as discussed on Pages 7 to 8 of the Impact Assessment).
4. General approach – wider impacts: Please provide further evidence on the costs to small and micro businesses. Wider impacts are discussed further on Pages 34 to 36 of the Impact Assessment.
5. General approach – wider impacts: Please provide further evidence on the distribution of impacts, discussed on Page 36 of the Impact Assessment.
6. General approach – wider impacts: Please provide further evidence on the impact of proposals on competition. This is described on Page 36 of the Impact Assessment.

Summary of responses

- 3.15. The majority of respondents welcomed the consultation as recognition of the strategic importance of the sector and were supportive of a light-touch approach as proposed in this consultation. There was general agreement that the measures could go some way to alleviate pressure in the fuel supply chain. Industry emphasised the importance of minimising the impacts of any new regulations on the competitiveness of the downstream oil sector in the UK.
- 3.16. The primary concern was that the cumulative burden of regulation or that the enforcement of powers resulting in distortion of competition or market functions could ultimately reduce the resilience of the sector. Therefore, stakeholders proposed that clarification should be provided that there would only be ministerial intervention in exceptional and limited circumstances. Additionally, stakeholders urged that new measures should not create significant administrative burdens on industry.
- 3.17. Some respondents argued that the expected future reduction in demand would create spare capacity and therefore increase resilience. However, this is contrary to the observed current practice in the sector, which has seen spare or unused capacity removed to minimise running costs.

Government response

- 3.18. Government welcomes the support for light-touch measures, and considers that the proposed measures have the lowest impact on the sector of the options considered or proposed while also achieving the policy aims. One of Government's top priorities is ensuring that Great Britain has a secure and reliable energy supply. These measures reflect a number of years of in-depth work and discussion with the sector to understand the pressures affecting the resilience of the fuel supply chain.

- 3.19. Government has undertaken a number of studies and discussions with suppliers that led to the proposals in the consultation. We will continue to monitor the sector with and tailor policy responses to the evolving market landscape.

Conclusion

- 3.20. Government has considered respondents' comments on the general approach to maintaining sector resilience. We have used this to test the options to improve resilience using a framework that assesses value for money in terms of the risk of economic damage resulting from fuel shortages.
- 3.21. As is discussed further in this document, Government wishes to continue to work with stakeholders in finalising the detail of the proposed measures and how they will be implemented, and will explore potential solutions with trade associations, individual companies and end-user representatives.
- 3.22. Government has also heard clearly that there is no current appetite for a fully regulated sector (e.g. through a licencing regime), which we are avoiding with these proposals.

Information reporting

- 3.23. Government is seeking to introduce a regime to collect information from the downstream oil sector for the purposes of fuel supply resilience. The information sought is limited to what is necessary for the protection of fuel supply resilience, without breaching commercial considerations. The purpose of this measure is to ensure specified and sufficient data-reporting from the downstream oil sector to Government for the purposes of fuel supply resilience.

7. Information-reporting – scope: Based on BEIS' rationale, and the areas for reporting proposed in Annex A, please suggest any additional areas where you believe information-reporting would be beneficial to Government's oversight of the downstream oil system and therefore to improve resilience.
8. Information-reporting – scope: BEIS proposes specific reporting thresholds for each part of the regime as set out in Annex B, where appropriate these are consistent with existing reporting regimes. If you do not consider these to be appropriate, please suggest alternative reporting thresholds and a rationale for the selected level.
9. Information reporting – templates: BEIS would welcome comments on the scope and detail of the attached templates. Please reference the template name(s) when providing comment.
10. Information reporting – sharing: Please indicate which (if any) attributes should not be shared with other government departments and if so explain why. Also indicate any information already submitted to other government departments that could meet any of the proposed reporting requirements to help us reduce the burden on business.
11. Information reporting – impact: BEIS welcomes comments and feedback on the impact on business resulting from the information reporting proposals; and on the approach and

assumptions used to quantify benefits. This is discussed further on Page 16 of the Impact Assessment.

12. Information reporting – impact: BEIS analysis of cost impacts due to reporting has been based on cross-sector estimates. Consultees are invited to offer evidence on the below:
- a) wage rates to verify the estimates on Table 5, Page 17 of the Impact Assessment;
 - b) analysis of company costs, and how they may differ from the estimates in Table 6, Page 18 of the Impact Assessment;
 - c) the costs of providing wet stock management data described on Page 19 of the Impact Assessment;
 - d) analysis of benefits, Page 21 of the Impact Assessment.

Summary of responses

- 3.24. A number of responses expressed support for the information reporting measure and the proposed reporting templates. It was also noted that there was potential for improved Government and industry relationships with some consumers calling for increased scope of reporting requirements.
- 3.25. Industry highlighted that some of the information captured by the proposals was already provided to Government, and supported BEIS in seeking information sharing gateways with other government Departments where possible in order to minimise the administrative burden on industry. Where this has not been possible historically due to information protection considerations, the proposed information reporting measure will give Government the legislative footing to enable the sharing of relevant information between Departments.
- 3.26. Some stakeholders sought assurances that the amount of information captured under the information reporting regime would not exceed Government's capacity for analysis or to derive further insights. Further consideration was requested on the costs associated for reporting, particularly with regards to fuel stock monitoring systems.
- 3.27. Additional clarity was sought over some of the language used in the consultation document annex on information reporting, particularly how "threatened" loss ought to be interpreted. Industry also highlighted that the threshold for disruption reporting needed to be more nuanced, as the volumes of fuel handled by different parts of the sector varied considerably.

Government response

- 3.28. Government is seeking to collect information from the downstream oil sector to better understand and protect against the risks to UK fuel supply. The scope and detail of information required must consider costs to industry for reporting and benefits derived from the analysis of this information. This is a balance between the administrative burden on industry and Government to report and analyse data versus the value of that information in supporting a Government response. The level of reporting proposed in the consultation is considered to meet this balance; there is therefore no intention to change the scope of reporting. However, Government will continue to work closely with industry stakeholders to ensure that reporting thresholds and the reporting processes are of least burden possible.

- 3.29. Government is continuing to explore whether the data that the sector already provides to other Departments is in a suitable form for downstream oil resilience purposes. To be of value, information must be of the correct detail and scope, must not breach any pre-existing confidentiality or data protection agreements, and timely. Information reporting regimes under consideration, as suggested by industry through the consultation include sharing arrangements with HMRC, ONS, DfT, MCA. Respondents did not identify data streams which BEIS has not already considered.
- 3.30. Government currently receives anonymised daily fuel station stock levels (“wetstock”) data from two fuel stock data management companies, with an agreement to receive information from a third company during emergency situations.
- 3.31. It was proposed in the consultation document that companies owning more than six fuel stations might have to report data, irrespective of whether they have automated electronic systems to report information. Following consideration of stakeholder views regarding this requirement, Government is proposing to remove the need for such companies to report fuel stock information. This will limit the obligation to report fuel stock data only to sites where fuel stock management systems are already in place.
- 3.32. The intention is for Government to have a national view of fuel stock levels in order to understand the scale and impact of fuel disruptions when they occur, and protect the supply of fuel to consumers – but this must be balanced with any costs on industry. Therefore, the proposed reporting regime will not require the installation of fuel stock management systems, but will only apply to fuel stations that already have systems in place, or those that install such systems in the future. This measure will improve reporting coverage, place existing reporting on a legislative footing, but will not increase the administrative burden on fuel stations.
- 3.33. Government has sufficient analytical resource to meaningfully interpret information on the scale proposed in the consultation. Government analysts have a detailed knowledge and understanding of the downstream oil supply system. The majority of data handling will be conducted by automated quantitative systems that model the supply system. These models are already in place, the integrity of which is being tested through Government modelling quality assurance process and the underlying assumptions are tested with industry on a regular basis. Access to more complete information will improve these system models, and ensure Government has a full and accurate understanding of downstream oil sector resilience.
- 3.34. Government is continuing the development of the incident reporting regime. The consultation process raised concerns around the type or scale of incident that would necessitate a report, and when incident reporting would be required (i.e. specifically the level of risk that would trigger reporting). Government recognises the requirement to minimise the reporting burden to incidents that are of significance to fuel resilience, as well as the importance of clarity over the timing and scope of the incident reporting obligation (defining risk and the reporting processes). Government will continue to develop the regime and will consult industry on final proposals before any incident-reporting obligation is implemented.

Conclusion

- 3.35. Government will continue to explore ways of minimising the administrative burden involved in collecting the data necessary for maintaining sector resilience. For example, we will look to use data that is already reported elsewhere in Government, where

possible, and continue the development of the incident reporting regime to ensure that it is appropriate and well-defined.

- 3.36. Government understands the need for clarity over the detail of the reporting requirement. The details of each reporting process will be set out in guidance. Industry stakeholders will be consulted before implementation of the reporting regime, to ensure that reporting requirements are fully understood.

Ownership test

- 3.37. An ownership test would be used to ensure that new owners of the downstream oil system components are financially sound, and therefore do not pose a financial failure or insolvency risk; and are operationally competent, or can demonstrate competence of an assigned operator. A measure would be composed of three parts: (1) an obligation on industry to report change of ownership or control; (2) a power for Government to request information in relation to a qualifying transaction; (3) a power for Government to intervene in qualifying transactions.

13. Ownership test – scope: BEIS proposes that all downstream oil companies handling at least 500,000 tonnes per year would be captured in the scope of the ownership test. If you do not consider this appropriate, please suggest an alternative threshold and the rationale for the selected level.

14. Ownership test – scope: BEIS proposes that a change threshold of 25% or more of shares or voting rights for a transaction to be captured by the ownership test. If you do not consider this appropriate, please suggest an alternative reporting threshold and the rationale for the selected level.

15. Ownership test – impact: Please provide evidence on the potential costs and benefits of the ownership test. This is discussed further on Pages 27 and 28 of the Impact Assessment.

Summary of responses

- 3.38. Respondents were split on support of the proposed test. Infrastructure owners and suppliers flagged concerns that any burdensome ownership test would discourage investment in the sector. Some suggested that the tests could fetter the market, especially if Government favoured existing market players. Infrastructure owners argued that Ministers already have the proposed powers within the Enterprise Act 2002, and that competition concerns would arise from the potential constraints that these tests put on the UK market. On the other hand, retailers were supportive of the rationale behind the intervention, but also noted that market impacts must be minimised.
- 3.39. Some suppliers and wholesalers argued that the threshold was too low, and suggested it should include consideration of the specific geographic and market context of each asset sale – a point also raised specifically by infrastructure owners.
- 3.40. Suppliers requested additional information regarding how large international transactions which included the change of ownership or control of UK assets would be managed, and how market exits would be handled.

Government response

- 3.41. Government agrees that it is important for the ownership test to be proportionate to the risk that a new investor in the downstream oil sector would pose a fuel supply risk. We are fully aware that a heavy-handed interventionist approach could deter future investors and therefore reduce the resilience of the sector.
- 3.42. To avoid this risk, Government will take a risk-based approach to assessments of proposed changes to ownership or control, which will take into account the wider resilience context when deciding whether a prospective owner is financially competent and operationally capable.
- 3.43. Clarity for potential investors will be provided about the information required and the metrics that Government will be using in assessments. The test will be consistent in how this information is analysed, but there will not be hard 'pass' or 'fail' thresholds, rather each investment case will be considered on an individual basis. This will minimise the risk that the introduction of the tests may deter future investors in the sector.
- 3.44. The Government believes in the value of new entrants to markets to promote competition and innovation – as long as the companies can demonstrate robust finances and operational competence. It is not our intention that these powers are used to protect incumbents.
- 3.45. The Enterprise Act 2002 does not provide the necessary powers. While the Enterprise Act only applies to mergers, the proposed ownership test would apply to investments, mergers and acquisitions. Further, powers under the Enterprise Act are limited to mergers resulting in the substantial lessening of competition. In some special circumstances, the Secretary of State may intervene in limited cases that do not qualify under the Enterprise Act's general merger regime but where a specified consideration is relevant to the merger. However, protecting fuel resilience is not one of the qualifying circumstances under which Secretary of State may intervene. This means that the Enterprise Act will only apply to the downstream oil sector where the transaction is a merger resulting in the substantial lessening of competition. The scope of the ownership test is much broader than this. Therefore, the scope of the Enterprise Act is not an appropriate substitute.
- 3.46. Government has considered a call from industry to take into account geographic sensitivities when defining the scope of the ownership test. To do this, Government would have to define a list of assets essential to UK downstream oil sector resilience. This list could not be publicly available for security reasons. This would mean that potential investors in the downstream oil sector would not know whether the asset they were looking at purchasing was within the scope of the ownership test. Therefore, this would increase uncertainty around a potential transaction and could reduce the attractiveness of investment as a result.
- 3.47. On the basis of industry concerns about the threshold for the ownership test, Government has also reconsidered which level would be most appropriate. Under the 500,000 tonnes threshold, 36 assets are captured (2016 volumes). Raising the threshold to 1,000,000 tonnes per annum would remove 8 assets from scope. Government has considered the supply chain's current and possible future dependence on these assets and has concluded that they ought to be in the scope of the Ownership Test. Consequently, we will not be changing the threshold from 500,000 tonnes per annum.

- 3.48. Industry raised some valid concerns about the potential for this test to have implications for mergers of large, international companies. Consequently, Government has clarified its policy position on this and the Ownership Test will only apply to domestic assets, and Government will not try to block or unwind international deals over concerns of how UK assets would be run or managed under new ownership, although Government could require the divestment of UK assets.

Conclusion

- 3.49. Government understands industry's concerns regarding the potential for the Ownership Test to deter investors and will take this into consideration when conducting risk based assessments of potential investors into the sector. Government argues that setting a fixed threshold for inclusion within the Ownership Test is the most transparent solution and therefore minimises any potential deterrent effects. Finally, in order to mitigate industry's concerns around extraterritoriality, Government has refined the scope of the test to be at asset level, rather than at company level. This last move will have the effect of removing from the scope of the test companies who own a number of smaller assets which together have a throughput exceeding 500,000 tonnes.

Government spending

- 3.50. Government can foresee situations where commercial drivers end up with socially or economically important services dependent on a single point of supply. Government has no powers to offer financial support to maintain resilience even where direct intervention may be the best value for money means of preserving resilience.
- 3.51. To note, and for further reassurance, Government is live to, and would fully evaluate and avoid significant market distortion or competition impacts as part of any spend.

Government spending - questions to consider

16. Government spending – impact: Please provide evidence on the costs or benefits of the government spending measure. The analysis conducted by BEIS is discussed on Pages 28 to 30 of the Impact Assessment.

Summary of responses

- 3.52. Some respondents were encouraged that Government is live to opportunities to make strategic investments in supply infrastructure that avoid significant market distortion or competition impacts. However, the majority had concerns that proposed interventions under the Government spending power could lead to market distortions and deter investment. Some proposed that the measure would act as a disincentive for owners to maintain facilities and considered that the measure may encourage requests for Government support.

Government response

- 3.53. As set out in the consultation document the Government does not expect to make frequent use of a spending power nor is there any intention to allocate a budget for this purpose. Rather this power is intended as a backstop in case there is an overwhelming need for intervention at some point in the future.

- 3.54. Government policy is not to intervene in the market to distort unnecessarily competition in favouring one company over another. This policy is currently encapsulated in EU State Aid rules. The Government supports strong State Aid rules to ensure aid is targeted to address market failures and avoid negative effects on competition. With strong rules, those who receive advantages from the state won't become overly reliant on aid and will remain incentivised to innovate or make efficiencies. New market entrants are encouraged and weak companies are less likely to stay in the market. Ultimately, it's a better deal for consumers.
- 3.55. Any intervention will have to meet normal standards for Government spending as set out in *Managing Public Money*⁶, including the key principles of: Regularity, Propriety, Value for money and Feasibility
- 3.56. However there are some scenarios where we can foresee a case for intervention. In line with our policy on State Aid and value for money, any intervention will be the minimum necessary and generally targeted so that there is minimal impact on competition and any impact is for the shortest possible time.

Conclusion

- 3.57. Government has considered several scenarios in which there may be a case for intervention:
- to enforce standards (e.g. security) related to resilience
 - to prevent a site from closing
 - to provide temporary support to a failing asset to allow the market to adjust supply chains without disruption to end-users.
- 3.58. It is our general assumption that sites identified as single points of failure are likely to have sufficient demand (as distribution terminals) to be commercially sustainable. Therefore, they will not require any financial support to remain open or meet normal good practice standards of site operation. However, we note that other operations such as refining may still fail to be profitable even when attached to a critical distribution site. It is not our intention to subsidise loss-making businesses and there is currently no compelling resilience rationale to provide long-term financial support to maintain refining operations at loss-making sites.
- 3.59. Government has seen examples where non-critical asset capability has been lost because it cannot compete commercially so loses all customers for specific products and the owner removes key infrastructure to save cost, even though the site itself remains in use for other purposes. This has the effect of reducing overall resilience.
- 3.60. Government acknowledges that supporting loss-making assets is likely to have an effect on competition. Therefore, Government is considering "golden key" models in order to minimise market impact. A "golden key" model would be where an asset is maintained so that it could be used in an emergency situation (with Secretary of State approval needed to sanction the use) but where companies may not use the site for commercial gain.

⁶ HM Treasury guidance on how to handle public funds: [Managing public money \(including annexes\)](#)

Enabling industry-wide measures

- 3.61. Government is uniquely placed to identify the need for cross-industry resilience measures which might act as ‘insurance policies’ in case of disruption. However, the implementation of such measures is most effectively and appropriately managed by the industry sectors with the relevant operational skills and experience. Government is therefore proposing a measure to support industry in establishing and managing schemes to improve resilience in the downstream oil sector. It is proposed that this measure would enable the Secretary of State for Business, Energy and Industrial Strategy to set out the detail of collaborative schemes through secondary legislation. There will be further consultation on the detailed options for achieving each scheme individually.
- 3.62. At present, Government is considering one scheme, a reserve tanker fleet similar to that currently managed by the Department of Business, Energy and Industrial Strategy. Analysis shows that a reserve tanker road fleet of this size provides sufficient additional logistical capacity to mitigate disruption impacts from a significant single point failure in GB infrastructure.
- 3.63. Government believes that industry would be more efficient in owning and operating the fleet. The scheme could be organised and managed by an industry body which is funded and controlled by industry members under pre-agreed protocols that deliver its aims and objectives.

17. Industry-led measures – approach: Please set out how you think an industry-led reserve tanker fleet scheme could be best delivered including on the structure of the scheme (e.g. collaborative, company limited by shares).

18. Industry-led measures – members: Which part of the downstream oil sector do you consider best placed to manage the reserve tanker fleet: Hauliers, Wholesalers or some other category of undertaking? (Sector group definitions used for the purpose of this consultation are provided at [Annex C](#)). Based on the sector group chosen, how best could membership contributions be determined?

19. Industry-led measures – support: Are there other considerations that should be introduced to support or facilitate the creation of an industry body, or to protect industry interests?

20. Industry-led measures – reserve tanker fleet drivers: In the event of requiring use of the reserve tanker fleet, how many of the reserve tanker fleet rigs could be manned by your company or agency drivers (i.e. how many drivers could be made available to operate reserve tanker fleet vehicles)?

21. Industry-led measures – impact: Please provide evidence on the cost of running the industry-led fuel supply and distribution resilience scheme. This is discussed further on Page 22 of the Impact Assessment.

22. Industry-led measures – impact: Please provide evidence on the cost of procuring a fleet reserve fleet. This is discussed further on Page 23 of the Impact Assessment.

23. Industry-led measures – impact: Please provide further evidence on the benefits of the industry led resilience improvement scheme. This is discussed further on Page 24 of the Impact Assessment.

Summary of responses

- 3.64. Views on the reserve tanker fleet were mixed. Representatives of consumers and end users were generally supportive of the proposal for its benefits to fuel supply resilience. Other respondents' views varied from opposition in principle to a power to establish industry schemes to requests for more details of how a scheme would work.
- 3.65. Many of the refiners and wholesalers referred to comments made at one of the workshops that there was already sufficient spare road tanker capacity in the market and proposed that Government should conduct a better assessment of spare capacity to verify the continued need for the reserve tanker fleet. However, no hard evidence was provided of spare capacity in the market, and this view is inconsistent with previous statements from hauliers in bilateral discussions and during live issues that road tanker utilisation is high and there is no spare capacity. Government will need a high level of assurance that the sufficient capacity exists and will be maintained in the sector.
- 3.66. There were mixed views across the sector on how the scheme should be funded. Suppliers did not accept the proposal that industry should bear the costs for funding the scheme, whereas other subsectors though suppliers were best placed to fund it.
- 3.67. Infrastructure owners and retailers viewed hauliers as the best placed to manage the scheme. There was general consensus that the funding for reserve aviation fuel tankers should be separate from that for road fuels.
- 3.68. Wholesalers, infrastructure owners and retailers believed that the Government's continued funding and management of the reserve tanker fleet was the most appropriate mechanism for its continued existence.

Government response

- 3.69. The proposal is that Government take a power to establish industry-led schemes to maintain and strengthen fuel supply resilience. Each future scheme would need to be set out in secondary legislation – including the proposed reserve tanker fleet. This ensures that industry consultation and scrutiny by Parliament is conducted on schemes before these are implemented. Therefore, there will be further opportunity to comment and influence the design of any proposed future industry-led schemes.
- 3.70. Government has carried out an in-depth analysis of the downstream oil supply system, analysis that will only be improved by the information reporting regime. The analysis showed a reserve road tanker fleet to be the cheapest and most flexible way to mitigate disruption impacts from a single point of failure in GB infrastructure. The need for distribution capability with reserve tankers was also confirmed through bilateral discussions with industry stakeholders. Government has, and will continue to seek evidence to improve the quality of system analysis and will work with stakeholders to identify the extent of spare capacity. A complete and accurate understanding of system distribution capacity will ensure that the reserve tanker fleet is sized appropriately.
- 3.71. Industry management of the fleet is likely to be more flexible than Government control and we can envisage that industry could work to allow use of vehicles to reduce and

recover costs in non-emergency scenarios (for example, cycling reserve fleet vehicles with commercial vehicles to provide servicing flexibility or distributing vehicle usage). Any use of the fleet for normal commercial operations would need to be fair, could not displace business as usual fleet sizes, nor impact the ability of the fleet to meet primary resilience objectives.

- 3.72. Funding of the scheme by industry would ensure that the beneficiaries bear the costs. The key requirement will be to ensure the equitable and fair distribution of the costs of resilience. In response to consultation responses Government will consider establishing a separate funding arrangements for the aviation fuels fleet. A member's contribution to the scheme would therefore reflect their involvement with a fuel type and the level to which (or cost) of TankerCo in supporting the delivery of that fuel type.
- 3.73. Government has identified Suppliers as best placed to manage and fund the reserve tanker fleet, on the basis that these organisations: form a single layer of the sector supply chain to avoid double counting; cover the great majority of the relevant market to avoid market distortion; are capable of a clear legal definition for the purposes of clarity; are able to collect accurate data on market share with minimal / proportionate additional burden on industry; are relatively easy to administrate (avoid placing obligation on SMEs, applied to a manageable number of companies).
- 3.74. Government considered suppliers as best placed to manage and administrate the scheme, but is clear that the expertise of haulage companies would be helpful in ensuring that the scheme is fit for purpose. The detail of the scheme's structure and input of expertise will be dependent on how members wish to establish and operate the scheme in order to meet the policy objective.

Conclusion

- 3.75. As the fuel supply chain becomes more efficient, its ability to cope with incidents which lead to loss of capacity diminishes, reducing the resilience of the sector. Government is committed to ensuring a secure and reliable energy supply and is working to ensure that the ability of the supply system to protect the continuity of fuel supplies and be resilient to disruptions is maintained. Government is therefore proposing a measure to support industry in establishing and managing schemes to improve resilience in the downstream oil sector.
- 3.76. The reserve tanker fleet is the first scheme that is being considered for implementation. Government recognises the issues raised by stakeholders during the consultation and will continue to develop options for the technical detail of the scheme. A crucial component to ensuring that the reserve tanker fleet is fit for purpose and sized appropriately is that Government has a complete and accurate understanding of the current distribution capacity, and available reserve capability. Government will continue to develop its evidence base on reserve distribution capability with industry stakeholders. The details of scheme, operation, membership and functions will be confirmed through further consultation ahead of implementation of secondary legislation.
- 3.77. Government is developing the reserve tanker fleet scheme policy following consideration of industry views relating to the detail of establishing and operating the scheme (for example, handling of liabilities, competition law, driver availability), and will engage with industry on these points directly.

Resilience direction

24. Resilience direction – Impact: Please provide further evidence on the costs and benefits of the resilience direction. BEIS' analysis is discussed further on Pages 25 and 26 of the Impact Assessment.

Summary of responses

3.78. Generally, responses to the proposed direction power were limited. Wholesalers expressed a preference for a voluntary approach rather than the proposed legislative solution.

Government response

3.79. As set out in the consultation document, Government will always seek a voluntary approach to maintaining fuels supply resilience whenever possible. Government does not expect to make frequent use of a power of direction but it will provide an important back-stop in the case where companies will not agree to a voluntary approach which is demonstrably in the public interest in terms of fuel resilience.

Conclusion

3.80. Any legislative proposals will include a requirement to consult the company before a direction is issued (subject to any time constraints) and if a voluntary agreement is reached there will generally be no need to issue a direction.

Overall Conclusion

Government has heard clearly industry's calls for a light-touch approach to measures, with careful consideration taken to minimise any impacts on market dynamics and competitiveness, and will continue to work with industry on refining the proposed measures to ensure that this aim is achieved.

- 4.1. The downstream oil sector plays a key role in our energy security, supplying products that are vital to our economy and our way of life.
- 4.2. However, doing nothing will expose the UK market to real, though low probability, risks with large economic and social consequences if they were to materialise. The impacts of these risks ultimately fall upon the economy and the individual consumers to bear. Government does not feel that this is an equitable distribution of risk in an economy and society which has to work for all.
- 4.3. Our proposed approach is to put in place a small number of light-touch measures which provide Government with the tools to identify fuel supply risk and support industry in insuring fuel supply resilience, with further back-stop powers to protect fuel supply resilience when required. These measures are designed to work in the structure of the fuel supply market.
- 4.4. Government will maintain an ongoing relationship with industry in finalising the proposed measures and to ensure the best solutions are found and implemented efficiently.

Annex A: List of respondents

Refiner/Supplier

UKPIA
Essar
Esso Petroleum
BP
TOTAL
Valero

Wholesalers

UKLPG
Calor
Federation of Petroleum Suppliers
Certas
Greenergy

Infrastructure

Tank Storage Association
Inter Terminals
Oikos Storage
World Fuel Services Europe Ltd
British Ports Association

Hauliers

Reynolds
DHL
Suckling

Retailers

Petrol Retailers Association
ACS
Downstream Fuel Association

Consumer/end user representatives

The Automobile Association (AA)
Heathrow Airport Limited
RAC
Airport Operators Association

Devolved Administrations

Northern Ireland
Wales

Annex B: Downstream oil sector groups

A company may fulfil any one, combination or all of these roles (for retail, commercial and/or aviation fuel services).

- **Suppliers** – Company involved in bulk supply of a terminal, may be a refiner or company purchasing product in bulk (vessel, railcar, pipeline). Terminal or refinery owners – some of whom may not own the fuel.
- **Re-seller** – Company that both purchases and sells the same volumes of product at the loading rack.
- **Wholesalers** – Company that purchases product, arranges transport of that product, and sells product to a retailer. Sale is at a retail site and the wholesaler arranges haulage, and owns the fuel during transport.
- **Hauliers** – Company that delivers fuel from terminals to service stations, typically acting on behalf of a wholesaler.
- **Retailers** – Owner / operator of a service station forecourt. Purchases fuel, and has a contract to be supplied with fuel by wholesalers. Also includes commercial wholesale customers and airport refuelling services.

