



Department for  
Business, Energy  
& Industrial Strategy

# Energy Bill Policy Statement

Core Fuel Resilience

December 2022



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## Part 1- Delegated Powers

The Energy Security Bill was introduced into Parliament on 6 July 2022. This Bill will deliver a cleaner, more affordable and more secure energy system for the long term. It builds on the ambitious commitments in the British Energy Security Strategy to invest in homegrown energy and maintain the diversity and resilience of the UK's energy supply.

The Energy Security Bill makes provisions to the Core Fuel Sector Resilience measures which intend to give the Government the necessary tools to protect against fuel supply disruptions during the transition to a net zero emissions economy. The measures will ensure the core fuel sector takes appropriate actions to maintain or improve fuel supply resilience and to guarantee the UK a secure and reliable energy supply.

The measures include the following powers.

- information powers: requires industry to provide information upon request to provide regular data, or to report incidents to ensure Government can identify potential and actual disruptions early and target contingency measures more effectively
- powers of direction: enables Government to direct industry to take measures to improve their own resilience or ensure continuity of supply – this power would be used proportionately and as a last resort
- financial assistance power: allows Government to provide financial assistance to support sector resilience and ensure continuity of supply

These measures are intended to work within the structure of the fuel supply market. They would allow the Government additional protections for 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. The Government considers that these measures are an appropriate and effective response to arising issues and create a more aligned and transparent protocol between the Government and the sector.

To support the implementation of these measures, the Bill contains a number of delegated powers to make regulations which are each subject to a level of Parliamentary scrutiny that the Government deems appropriate.

The delegated powers are intended to make minor modifications to the policy or extend the current thresholds, which would otherwise need further legislation.

It is the Government's intention to ensure that appropriate scrutiny and review are applied to these powers and limiting the scope of the delegated powers has been sought.

This paper outlines statements of intent, rationale and policy designs of these powers and seeks to clarify how this applies to the sector in practice.

# Direction Powers

## Policy intent

The direction power in Clause 204 aims to provide the Government with the ability to give directions to the larger players in the industry, applying to a person carrying out downstream activities which has capacity in excess of 500,000 tonnes or downstream facility owners with capacity in excess of 20,000 tonnes where a justifiable resilience purpose is identified.

This power is based fundamentally for the purpose of:

- maintaining or improving core fuel sector resilience
- restoring continuity of supply of core fuels or counteracting the disruption to or failure of continuity of core fuels, or its potential adverse impact
- reducing the risk of disruption to, or a failure of, continuity of supply of core fuels, or reducing the potential adverse impact of the disruption or failure

This measure is intended to direct sector operators where a substantive issue has occurred and where the Government does not consider that the persons in question have made sufficient progress necessary in maintaining or improving core fuel sector resilience.

## Background

Under the Energy Act 1976, there are existing forms of direction powers that can be used under certain conditions, namely, to respond to emergency situations and for conserving energy in certain circumstances. These measures do not, however, enable the Government to require persons to take action to emerging risks or threats, or to enforce effective contingency planning in order to prevent an emergency. Furthermore, they do not allow the Government to have a holistic view of the sector and provide limited or no powers to identify and address lower probability, high impact risks from the initial stage.

Not having mitigations in place to increase the resilience of the sector, exposes the UK market to real, though unlikely, risks, with high economic consequences. Individual companies have responsibility of their own supply, and the intention of the Bill is to generate transparency, ultimately aligning the sector to assure resilience for the future.

Where businesses may not have the ability to respond to a disruption in the first instance, the Government would be able to instruct the sector to take certain actions for the purposes of preventing an emergency. For example, the Government might issue a direction for improvements in physical security where existing protections pose unacceptable risk to fuel supply, and where the asset owner will not take the appropriate measures to make improvements without direction.

This power would therefore provide scope for the Government to intervene in these instances and require industry participants to take appropriate steps to ensure resilience measures are in place to mitigate the risk to fuel supply or apply functions to any emerging issues or emergencies.

### Policy design

This power will be used in parallel with the information powers in clauses 208 and 209. While the information power allows the Government to monitor the sector, the direction power will work in conjunction to ensure that there is no disruption by asking suppliers to take certain actions in relation to their activities.

The direction power under these clauses is specifically aimed at the major players in the core fuels sector whose operations are critical to the continuity of UK fuel supply. This power applies to a person carrying out downstream activities which has capacity in excess of 500,000 tonnes or downstream facility owners with capacity in excess of 20,000 tonnes, e.g., refineries, terminals, hauliers, and pipelines operators.

Although the Government should not issue a direction re the maintaining or improving or core fuel resilience unless it considers that those involved have not made sufficient progress voluntarily, in cases of imminent disruption, the Government is able to act quickly to deter an escalation of the threat and therefore there is no requirement to show that the sector should act on a voluntary basis in emergency situations.

The Government must give prior notice to the recipient of the direction so that they are aware of what is required ahead of time and for them to make written representation and to utilise the appeals process if they do not agree with the direction. There is a further requirement for BEIS to consult with other public bodies before issuing the direction - those to be consulted will depend on where in the UK the direction is to be issued.

The direction powers under clause 204 do not require parliamentary scrutiny as they are considered an executive function rather than legislative.

# Corresponding powers to make regulations

## Policy intent

The Government intends to use the power to make regulations to impose requirements on a class of relevant persons, to be utilised in circumstances where actions may be required for a larger number of operators or owners. The policy aim for these powers are broadly set out as:

- power to make regulations for the purpose of maintaining or improving core fuel sector resilience
- power to make regulations where there is a disruption to, or a failure of continuity to supply of core fuels
- power to make regulations where there is a significant risk of disruption to or a failure of continuity of supply of core fuels

## Background

While the power to issue directions applies only to the larger operators in the sector that have a key impact on fuel supply; the regulation-making power allows the imposition of obligations on a much wider group including smaller businesses and facilities, should it be deemed necessary. As issues at individual smaller sites are unlikely to have an impact on the overall national fuel supply, the directions power would not be appropriate, neither on a commercial nor financial level. It has been considered, however, that a class of these smaller sites acting together can have an impact on the overall fuel supply market, hence the need for corresponding power to make regulations to require such classes to act.

## Policy design

The parameters of this power outline the ability to direct smaller but crucial suppliers to act in respect of a particular region or sector area. The Government would not issue a direction to these groups unless there is a compelling need to do so, and it would be governed by the intention of the above.

These powers could be used in respect of all parts of the sector. An obligation could be imposed on a smaller category of persons for example forecourts in the Designated Filling Stations scheme - which would collectively have an impact on the continuity of fuel supply. An obligation could also be imposed on businesses on a smaller scale that supply to particularly isolated communities.

As with the power of directions, the regulation power ensures there are levers in place to make the obligation fair, reasonable, and proportionate. The application of these powers in practice are subject to affirmative procedure which seeks approval by both Houses in Parliament due to



the potential scope of businesses that could be captured, potential interference as well as the criminal and civil offences that can be imposed as a result.

# Regulation making powers to specify a class or description of persons who are to be subject to a duty to report

## Policy intent

The duty to report incidents in clause 209 sets out a duty to sector operators to notify the Secretary of State of any possible notifiable incident which would pose a significant risk of, or disruption to or failure of the core fuel supplies.

With the sector's transition to more low carbon-based fuels, new categories of operators may need to be captured under the power in order to aid the evolution of the sector.

## Background

Currently, this standalone power places a direct duty on major operators in the core fuels sector whose operations are critical to the continuity of UK fuel supply. This applies to:

- an operator whose business has a capacity in excess of 500,000 tonnes per annum
- a core fuel facility owner who manages a capacity in excess of 20,000 tonnes per annum

A notifiable incident is defined as one that affects the person's relevant assets or activities in such a way as to create a significant risk of, or cause, disruption to or a failure of the continuity of supply of core fuels. Examples of the sort of incidents that are intended to be notifiable include a loss of operational capability due to accident, malicious attack or planned maintenance, a failure of fuel to meet specification, a threat of industrial action, or a risk of or actual insolvency.

## Policy design

There is a duty on these sector operators to notify the Secretary of State as soon as possible when a person knows or has reason to suspect that a notifiable incident has occurred or is occurring.

This delegated power would enable the Government to place a statutory duty on smaller entities, rather than to amend the entire threshold requirements for such operators by primary legislation. This might include those who have a major role in supply to geographically remote areas to report a notifiable event that could cause a disruption locally or in that region. An

example of this could be on smaller terminals which are critical to the supply of fuels to more isolated areas.

The Government considers that few such incidents will occur, therefore the burden on any new core fuel sector operator to captured by these regulations is likely to be small. However as this power is able to amend primary legislation, it does require full parliamentary scrutiny - hence the requirement for the power to be affirmative.

As the Government continues to work on the transition towards net zero, other relevant classes in the sector may emerge as the sector develops. The ability to tailor the reporting class requirements, permits the market to develop successfully in line with future changes and contributes to overall resilience purpose of the Bill. The Government sees this as particularly beneficial to a decreased demand for road transport or heating fuels as the UK transitions to net zero emissions.

The powers are subject to affirmative procedure prior to any implementation.

# Power to make regulations requiring a person to provide information to the Secretary of State, at specified intervals, relating to the person's relevant activities or assets.

## Policy intent

The information power provides that the Secretary of State may by notice in writing require a person to provide information relating to that person's relevant activities or assets for the purpose of maintaining or improving core fuel sector resilience. This power applies to a person carrying out downstream activities which has capacity in excess of 500,000 tonnes or downstream facility owners with capacity in excess of 20,000 tonnes. This corresponding power to make regulations further requires a person to provide information to the Secretary of State at intervals specified in the regulations.

The policy intent of this power is to widen the scope and remit of the information that the Government collects from industry.

## Background

The Government currently monitors the core fuel sector supply chain through information submitted by industry on a voluntary basis, through compulsory statistical data and via commercial arrangements with industry. It is important, however, for the Government to have a complete, accurate and holistic view of the core fuel supply chain. Without regulation, there is a risk that the Government can neither identify critical elements of the fuels supply system nor support industry in responding to a disruption in an effective and timely manner – leading to an escalation and possible disruption that could have been avoided possibly escalating to an emergency.

BEIS conducts periodic reviews of the resilience of the UK fuel supply system. These have been based on a voluntary survey of major infrastructure providers and road hauliers, supplemented by more general statistical information collected under the Statistics of Trade Act 1947. Despite these surveys providing a useful basis for information for the Government, this brings about an additional resource requirement for the sector and regular updates cannot be relied upon. Putting these data collections on a statutory basis will allow for a more frequent and complete assessment of the sector's level of supply.

BEIS currently collects information on approximately 65% of the forecourts in the UK through commercial agreements. Wetstock data is vital in identifying possible disruption and monitoring

the impact on local and national stock levels. Data is always provided on commercial terms and in line with data protection policy.

### Policy design

The regulations will set out the key data which BEIS will collect and for major infrastructure providers, this will mean an annual return on the volumes of fuels handled and the maximum capability of the infrastructure to distribute fuels. These data are automatically collected for monitoring purposes and the Government have considered that the burden on the companies involved providing this information to BEIS will be minimal.

There are also smaller independent forecourts that do not currently use automated wetstock management services. The regulation-making powers would allow the Secretary of State to require reporting of information at specified intervals to apply to these smaller forecourts when necessary if there is a compelling case for this. This would mean that the Government is better placed to obtain an overarching view of the core fuel supply sector and be apprised of potential risks or interruptions.

A relevant wetstock manager refers to a person who makes retail supplies or core fuels in the United Kingdom stock management services in respect of such supplies.

This corresponding power can only be exercised for the purpose of maintaining or improving core fuel sector resilience, only in relation to the person's relevant activities and assets and it can only be exercised in respect of persons whose business or facility meets the capacity thresholds or the person falls under the wetstock manager threshold.

This power could apply to instances where an imminent threat to supply would require smaller entities such as forecourts to provide regular data to forecast the development of the issue.

Despite the cost to industry as a whole of supplying this information being small, correct Parliamentary scrutiny and approval must be obtained by both houses prior to implementation, given the proportionality of imposing an offence and the level of penalty for non-compliance. If the power is used in relation to smaller entities, it may in some cases, be more costly for them to comply, and Parliament will want to ensure that the regulations contain sufficient safeguards to ensure the costs imposed are proportionate and justified.

The powers are subject to affirmative procedure prior to any implementation.

# Power to make regulations specifying description of actions to be taken in an enforcement undertaking.

## Policy intent

If the Secretary of State has reasonable grounds to suspect that a person has committed an offence under one of the powers, the person may offer the Secretary of State an enforcement undertaking in relation to the relevant act or omission, which the Secretary of State can then decide to accept or not upon review.

## Background

The purpose of this is to maintain the resilience and continuity of the UK's supply of core fuels. The Government therefore wants to adopt an approach which allows steps to be taken towards meeting that objective in the event that core fuel sector operators fail to comply.

Enforcement undertakings will allow the businesses involved to come forward with proposed remedies to non-compliance and, subject to the undertaking being accepted by the Secretary of State, avoid prosecution. This therefore reinforces that the creation of criminal sanctions is intended as a deterrent measure and to provide credibility and support to the measures.

This encourages transparency on the part of the Government to publish this procedure so both parties are clear on what is needed.

The policy intention is to have the civil sanction (enforcement undertaking) align as closely as possible to the model contained in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA"). The provisions are therefore intended to broadly follow the scheme for the use of enforcement undertakings as part of a civil sanctions' regime set out in section 50 of RESA. Section 50(3)(d) of RESA provides that the action specified in an enforcement undertaking can be an action of a prescribed description.

## Policy design

This corresponding power activates where there is a failure to comply with a direction, contravention of the information requirements, and/or an offence relating to making false statements when providing information to the Secretary of State.

If the Secretary of State has reasonable grounds to suspect that a person has committed one of the specified offences an offer or an enforcement undertaking is made to the Secretary of State.

Such enforcement undertakings can be used to take action for the purposes of preventing reoccurrence, or securing that the position is, so far as possible, restored to what it would have been had the offence not been committed, or to benefit any person affected by the offence.

The corresponding powers to make regulations allows the Secretary of State, by regulations, to specify a description of an alternative action that must be taken under an enforcement undertaking. This is because it is hard to prescribe all the actions that may be needed in such circumstances.

This power is subject to affirmative procedure in each instance as it enables Parliament to scrutinise and approve regulations that specify which actions may be performed in order for a person to avoid being prosecuted or subject to other discretionary requirements. The Government believes it is appropriate that Parliament can expressly approve that the actions described, if performed, are appropriate to have the consequence of removing the possibility of conviction.

# Power to make regulations amending or modifying the thresholds specified in certain provisions of this Part 10.

## Policy intent

The Secretary of State has the ability to amend or modify the threshold for capacity in excess, which determines the class of people who could be subject to the powers set out in this part of the Bill. This permits the Government to resolve any issues of fuel supply that may emerge, reinforcing the need for legislation to be flexible.

## Background

The core fuels measures are all fundamentally based on structured thresholds which capture certain classes of the sector that have a considerable impact on the supply of fuel. These include capacity thresholds for the persons in relation to whom: resilience directions can be given; regulations under direction powers can be made; notices requiring information can be given; and regulations requiring information in specified intervals. Similarly, the scope of the duty to report incidents is also determined by reference to specified capacity thresholds.

These thresholds were consulted on with industry and the values in the clauses reflect the responses to the consultation.

## Policy design

In instances whereby the thresholds unnecessarily capture core fuel sector operators or that the thresholds do not capture the relevant operators, this power provides the Secretary of State with the essential tools to address these issues and make alterations should this be necessary to the resolution of possible supply disruption.

Under this regulation-making power, the Secretary of State may amend or modify these thresholds given the changing landscape especially in the transition to net-zero. The core fuel sector is driven by innovation and the rate of adoption of low-carbon transport alternatives is rapidly developing. It is therefore important that the legislative framework can react and respond to this changing risk landscape and can build on contingencies for the purpose of resilience.

This implementation is subject to the draft affirmative procedure to provide appropriate Parliamentary oversight of proposed amendments to the scope of the various duties and/or powers. For example, lowering the thresholds will increase the number of persons caught by the provisions or regulations made underneath it, so the Government considers it appropriate



that Parliament has the opportunity to scrutinise and debate whether any revised thresholds are set at the right level.

## Next steps

The Government is currently in the process of developing guidance to support these measures and have consulted with the relevant stakeholders in the industry to ensure they are fair and appropriate to the accompanying measures. The intention is to assist those in the sector to follow the necessary steps to mitigate disruption to the supply of fuel and contribute to the overall resilience of the sector. The guidance will be drafted prior to Royal Assent and commencement to allow for correct scrutiny from Parliament and sector stakeholders.

## Part 2 – Guidance under Part 10: Core Fuel Resilience Measures

The Energy Security Bill was introduced into Parliament on 6 July 2022. This Bill will deliver a cleaner, more affordable and more secure energy system for the long term. As the most significant piece of primary legislation since 2013, the Energy Bill will liberate private investment in clean technologies, protect consumers, and reform the UK's energy system so that it is efficient, safe and resilient.

The Energy Security Bill makes provision for Core Fuels Resilience measures, which give Government the tools necessary to protect against fuel supply disruptions during the transition to a net zero emissions economy. The measures will ensure the core fuel sector takes appropriate actions to maintain or improve fuel supply resilience and to guarantee the UK a secure and reliable energy supply.

The measures include three principal powers that will improve the Government's ability to manage and reduce risks of disruption to economic activity from the loss of fuel supplies.

- information powers: requires industry to provide information upon request, to provide regular data, or to report incidents to ensure Government can identify potential and actual disruptions early and target contingency measures more effectively
- powers of direction: enables Government to direct industry to take measures to improve their own resilience or ensure continuity of supply – this power would be used proportionately and as a last resort
- financial assistance power: allows Government to provide financial assistance to support sector resilience and ensure continuity of supply

To enforce these powers and ensure compliance, the measures create several criminal offences. These offences can be split into several categories:

- where a relevant person does not comply with a direction
- where a relevant person makes a false or misleading statement to the Secretary of State
- where a relevant person has not complied with the requirement set out in the corresponding regulation making powers for directions and information reporting powers

The Government has committed to publish the following sets of guidance to provide further detail on respective measures:

- guidance on the duty to report a notifiable incident (see below)
- guidance on the financial assistance power
- guidance on criminal offences and civil sanctions for the breach of a direction, as the Government is required to do under Clause 220 of the Energy Security Bill.



# Duty to report incidents

Clause 209 creates a duty on major operators to report an incident which poses a significant risk of, or actual disruption to or failure of, the continuity of fuel supply.

## Background

Currently, there is no legal requirement for operators to inform the Government of major incidents at critical infrastructure sites in the core fuels sector. Having transparency and a clear line of communication between the Government and the industry is essential, especially in an unregulated sector such as the core fuels sector.

A proper and legitimate regime for the reporting of risk or disruption is necessary to ensure that the Government has an accurate view of the fuel supply system. To achieve this, core fuel operators will be required to report any significant risk or actual event that results in loss of resilience, or a loss of supply, in order to supplement regular system reporting to the Department for Business Energy & Industry Strategy (BEIS).

The Government has decided to publish guidance as a preference to statutory rules. This is due to the complexity of the core fuels sector where it is particularly difficult to foresee every risk and issue which poses a threat to resilience. Furthermore, a degree of judgement will need to be shown by the industry when assessing incidents, which is also better suited to guidance.

It is the Government's expectation that the guidance will develop over time and it will be easier to reflect any learning in a more flexible format. The Government is in the process of testing the scope of the guidance with stakeholders from the core fuels industry. Guidance will cover what counts as a notifiable incident, which likely include:

- the scale of loss of continuity of supply
- what exacerbating factors may create a significant risk
- timescales for reporting incidents
- the notification process and how BEIS should be contacted

## Design

It is the Government's full intention to create a reporting system designed to ensure that only serious risks and incidents are reported and to minimise the number of trivial reports, in order to reduce the burden on industry. However, the Government is also aware that there may be incidents which, taken alone, do not have a critical impact on fuel supply from a single company, but which might compound other failures by reducing the resilience of the system.

The Government has set out thresholds which specify whom the reporting obligations apply to, whilst providing industry with a clearly defined regulatory requirement. The thresholds provide that this measure applies only to operators or facility owners with an annual capacity over 500,000 tonnes. This is to remove the subjective element in assessing whether an incident requires reporting, which could result in either burdensome or redundant reporting. An operator will be expected to notify the Secretary of State under Clause 209 in circumstances where there is a risk to fuel supply associated with the person's operations above a certain volume level. The Government are in discussions with industry about what that might look like.

The Government recognises that in many instances the first course of action for core fuel sector members will be to respond to the incident. For this reason, it has taken the decision to determine the urgency of reporting to Government by the duration and scale of disruption.

A notifiable incident should be reported to the Government within short timescales i.e. immediately or as soon as possible, and no later than 24 hours after the incident was first discovered. However, the Government understands that there may be incidents which can be reported in slower time if they do not pose an immediate threat to supply resilience. These timescales have been established as they are short enough to be responsive, but aim to exclude events that will not result in material loss in resilience or disruption.

It should be noted that where a relevant person has reported an incident and the Secretary of State has issued a notice requiring further information on the incident, failure to respond to such a notice is considered an offence.

The Government is consulting with core fuel sector members on these proposed timescales for reporting and any exceptions which should be considered. The Government will provide further clarification on incidents that require immediate reporting and those incidents which can be reported in slower time in Guidance, as well as expanding upon the definition of reporting 'as soon possible'.

In addition to threatened disruptions or the occurrence of incidents, industry will be expected to report specific incidents which may pose a risk to supply, even if there is no immediate loss of fuel. This might include:

- any incident involving Firearms or Offensive Weapons on or near a site
- kidnap and / or ransom
- malicious cyber incident
- union intention to ballot members

## Objectives

The Government will publish guidance on this power to make it clearer for relevant persons to understand what is required and what their duties are in respect of reporting significant incidents.

It will also specify the procedure for reporting an incident to the Secretary of State, including the specific information that will be expected. The information required from operators will be limited only to what is necessary and Government will work with the core fuels industry to minimise any resulting administrative burden.

The Government appreciates its good relationship with the core fuels sector and this guidance will help to ensure this rapport is maintained.

Setting out these parameters in guidance will enable the Government to obtain a broader understanding of resilience across the sector and allow it to take necessary action if there is a risk to disruption.

## Power of financial assistance

The financial assistance power under Clause 222 gives the Government dedicated spending powers to enable the Government to support industry in implementing resilience protection or improvement measures to protect UK core fuel supplies.

This power is intended to be used when direct financial intervention is considered the most appropriate way to preserve resilience or the secure continuity of core fuel supply.

### Background

The BEIS Select Committee's report on the Downstream Oil Resilience draft Bill recommended that the Government publish guidance on the specific circumstances in which, and how, the spending power will be used. The Government accepted this recommendation in its official response to the Select Committee.

Additionally, members of the core fuels industry have frequently raised with Government that they would welcome more detail on how the power will be used.

The Government will therefore set out in guidance the factors it will take into account when assessing whether financial support is appropriate to maintain or improve core fuel sector resilience or to secure or maintain the continuity of supply.

The core fuels sector is both largely unregulated and subject to competition law, and the Government is acutely aware that any financial contribution granted will therefore have to adhere to subsidy control requirements. It is not the Government's intention to subsidise loss-making businesses nor to maintain a general support programme for the sector.

The cost will be borne by the Secretary of State for which there is a process, agreed by HM Treasury, that must be followed to improve rigour and ensuring that funding provided is for its intended purpose.

### Design

It has been firmly stated by the Government throughout the passage of this Bill that the financial assistance power is primarily designed to serve as a backstop power, and instances where the Secretary of State will choose to use the power will be unique.

The Government will clearly expand, through guidance, on the specific circumstances when the Secretary of State is likely to use the financial assistance power.

Guidance will set out the process for giving financial assistance and may cover what each option of financial assistance entails. It may also set out the considerations which the Government take in assessing which form of assistance will be provided.



The Government considers it would only provide financial assistance where one, or all, of the following criteria have been met:

- where the action required of the person clearly beyond normal industry good practice standards i.e. securing the continuity of supply of core fuels and maintaining or improving core fuel sector resilience - or there are clear and unavoidable reasons why the costs of meeting standards at this asset are materially higher than for other comparable assets
- where the additional cost to the person is sufficient to have a significant negative impact on their commercial sustainability
- where there is no cost-effective way of achieving the same outcome and this has been tested by appropriate techniques (e.g. independent assessment and/or competitive tender)

As mentioned, this guidance will further expand on the factors that the Government will take into account when making an assessment on whether the support is necessary for resilience purposes. Some of the factors that will be included in this assessment will likely include:

- the business case for expenditure
- an assessment of any possible market distortion, which may result from use of the spending power
- whether the business or institution in question has a history of loss-making

The Government recognises there will be circumstances where additional factors may need to be taken into consideration. For this reason, the Government has agreed to test these assessments during consultations with core fuel sector members which are currently in progress.

The Government is also further investigating circumstances which could potentially distort competition. This will feed into its assessment of instances when financial support would not be considered appropriate.

# Enforcement measures and criminal offences

The enforcement measures listed in Part 10 of the Energy Security Bill set out the basic parameters for criminal sanctions for which a relevant person can be subjected to for committing an offence. They are as follows:

- failure to comply with a resilience direction (Clause 204)
- failure to comply with a requirement to provide information under the information power (Clause 208)
- breach of the requirement to respond to a notice requiring further information regarding a notifiable incident (Clause 209)
- making a false or materially misleading statement under the information powers or in making any other statement to the Secretary of State in connection with any of the Secretary of State's functions under Part 10 (Clause 215)

## Background

There could potentially be severe impacts to security of supply if relevant persons do not comply with the powers within these measures. It is therefore essential that there are criminal, as well as civil sanctions, to deter businesses from failing to comply.

The BEIS Select Committee have requested in pre-legislative scrutiny of the Downstream Oil Resilience Bill that the Government should produce guidance on reasonable criteria that sets out how criminal sanctions will be exercised. Clause 220 of the Energy Security Bill now requires Government to produce this guidance.

## Design

Guidance will clearly state what level of enforcement the Government considers will usually be appropriate for a given offence and how enforcement would be undertaken. It will take into account existing examples of sanctions within the energy sector, other comparable business regulations and the wider experience of the Ministry of Justice.

An example of the reasonable criteria, which will be finalised in guidance, of whether the Government assesses prosecution to be appropriate includes:

- the general approach of the alleged offender
- whether there has been a continued disregard of the requirements imposed by legislation

- the gravity of non-compliance

In cases where it is suspected that an offence has taken place, under Clause 219, the potential offender may give an enforcement undertaking where they agree to take action to prevent the offence or stop the offence from reoccurring or make good any damage caused by the suspected offence, including compensating those affected. Failure to adhere to the undertaking will be a criminal offence. This option is designed to quickly stop the effects of an offence without having to have recourse to prosecution. As this civil sanction is outside of the criminal court system (subject to compliance), it is more efficient and cost-efficient for both the taxpayer and the core fuels industry.

Enforcement undertakings aside, the Government has made it clear that it will, in the first instance, seek to resolve a potential criminal offence through other means before any enforcement by legal proceeding. This will be pursued in the order of:

- informal warning
- formal warning letter
- criminal prosecutions

The Secretary of State will be responsible for deciding whether to report the matter to prosecutors.

## Objectives

Whilst enforcement undertakings provide a strong deterrence, it is important that enforcement arrangements are supported by criminal sanctions. It is the Government's ambition that these will be a strong deterrence for future non-compliance and businesses will realise that it is cheaper and more responsible to comply.

The reasons why the Government has chosen to include criminal sanction in the scope of these measures are:

- to support the enforcement of enforcement undertakings in rare cases where they are unsuccessful in deterring an offence
- to act as a proportionate deterrent against a serious breach which may lead to significant disruption in the core fuels sector
- to align with the enforcement policy employed within other parts of the energy sector

Guidance will provide additional information on the enforcement approach to the prosecution of officers under Clause 218.

Overall, the criminal sanctions proposed have been designed to incentivise compliance with the measures in Part 10 of the Energy Security Bill. Although the Government anticipates that overall the industry will comply with these measures, with low chance of criminal prosecutions, these measures remain important in ensuring that requirements are met across the sector. Publishing guidance will ensure that companies and individuals fully understand the

implications of noncompliance or making a false or misleading statement, and consequently, reducing the likelihood of an offence being committed.

## Next Steps

Publishing guidance will make it easier for members of the core fuel sector and other relevant persons to understand and adhere to the measures in Part 10 of the Bill.

The Government will conclude its consultations with the core fuel industry to ensure the conditions, requirements and specifications set out in guidance are both realistic and proportionate.

It is the Government's hope to issue guidance soon after enactment of the Energy Security Bill. Before doing so, guidance must be laid in front of both legislative houses to receive Parliamentary scrutiny. For this reason, the exact publication date will be subject to the Parliamentary schedule, however the Government fully intends to make guidance available in as little time after the Energy Security Bill has come into effect as possible.

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