



Department for
Energy Security
& Net Zero

Consultation on the guidance for the criminal and civil sanctions and on the procedure for entering enforcement undertakings for the core fuel sector resilience measures.

Energy Act 2023

Closing date: 8 July 2024

May 2024



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

Introduction

The Department for Energy Security and Net Zero is committed to ensuring that there is security of supply for 'core fuels' (which are principally fuels derived from petroleum or renewable transport fuels), preventing fuel supply disruption from events such as industrial action, malicious protests and loss of critical national infrastructure.

These measures in the Act allow government to ensure there are adequate protections for the key operations and infrastructure sites such as refineries, terminals and forecourts that are essential to maintain fuel supplies and would minimise risks of fuel shortages that might arise from the failure of such sites.

This consultation is seeking stakeholders' views on the proposed Guidance Document, which sets out guidance required by the Energy Act 2023 as to criminal and civil sanctions for breaches of the Core Fuel Resilience measures in the Energy Act 2023 (the "Act" or the "Energy Act"), and the procedure for entering into enforcement undertakings in respect of such breaches.

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Why we are consulting

We are consulting on the draft guidance on the criminal and civil sanctions for the enforcement of core fuel resilience measures in the Energy Act, including the functions for enforcement undertakings, and on the procedure for entering into enforcement undertakings. This guidance is key to compliance which helps maintain sector resilience.

The Department is keen to ensure that stakeholders are aware of their statutory obligations and the enforcement regime which they could be subject to. The document provides guidance as to the criminal and civil sanctions to which a person who commits an offence may be liable, the action which the Secretary of State may take to enforce offences under the core fuel sector resilience regime, and the circumstances in which the Secretary of State is likely to take any action. It also provides guidance as to how the Secretary of State's functions in relation to enforcement undertakings, are expected to be exercised. The procedure for entering into enforcement undertakings is appended to the guidance.

Consultation details

Issued: 13 May 2024

Respond by: 23:59 on 8 July 2024

Enquiries to:

Downstream Oil Resilience team
Department for Energy Security and Net Zero
Old Admiralty Building
London
SW1A 2BL

Tel: 0300 068 6900

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Consultation reference: Consultation on the guidance for the criminal and civil sanctions and on the procedure for entering enforcement undertakings for the core fuel sector resilience measures.

Audiences:

Anyone may respond to this consultation and consideration will be given to all responses. We will be particularly interested to hear from stakeholders in the core fuel industry such as refiners, terminal owners, hauliers, pipeline operators, forecourt owners and trade associations.

Territorial extent:

The proposed Guidance in this consultation will apply to all persons carrying out core fuel activity in the United Kingdom.

How to respond

There are specific questions highlighted in the consultation document and your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

When responding to this consultation, please state whether you are responding as an individual or are representing the views of a group or organisation. Representative groups are encouraged to give a summary of the people and organisations they represent and their role or interest.

Respond online at: energygovuk.citizenspace.com/energy-security/core-fuel-resilience-measures-breaches-sanctions

or

Email to: downstreamoilteam@energysecurity.gov.uk

or

Write to:

Downstream Oil Resilience team
Department for Energy Security and Net Zero
Old Admiralty Building
London
SW1A 2BL

A response form is available on the GOV.UK consultation page:

www.gov.uk/government/consultations/core-fuel-sector-resilience-measures-proposed-guidance-on-criminal-and-civil-sanctions

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](https://www.gov.uk). The summary will include a list of names or 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 way this consultation has been conducted, please email: bru@energysecurity.gov.uk.

Background

The core fuel sector is involved in the refining, importing, distribution and marketing of petroleum products and renewable transport fuels in the UK (United Kingdom). The sector is highly competitive, efficient and operates on a just-in-time basis which leaves the sector with limited resilience to supply disruptions. Unlike the gas and electricity sector, this sector is largely unregulated.

The Department works closely with the industry to address issues as they arise and there is currently a voluntary approach to how they respond to disruptions. The core fuel measures in the Act provide Government with powers to ensure a secure fuel supply to the UK.

The measures in the Act seek to strike a balance between limiting the burden on the industry and the Government being able to act to ensure resilience. The key measures are:

- Power to direct core fuel sector business for the purposes of resilience or to preserve the continuity of supply.
- Power to require information for the purpose of resilience in terms of incident reporting and routine information sharing between the sector and the Department.
- Power to provide financial assistance for resilience and continuity purposes.

The Department will seek to continue to engage with the industry to find voluntary solutions to issues where appropriate. The Act also provides for enforcement measures regarding the powers to direct and to require information, breaches of which are criminal offences.

The enforcement measures apply when there has been a failure to comply with a direction or certain requirements to provide information under the Act or if a false or misleading statement is knowingly made, and for breaches of certain requirements under Regulations which may be made under the Act. The approach to enforcement will be dependent on the severity of the breach.

Enforcement will also extend to the proposed requirement to provide information at specified intervals made by regulations under the Energy Act 2023 for the purpose of maintaining or improving core fuel sector resilience.

Summary of guidance

The draft guidance is structured to firstly inform core fuel sector participants of the enforcement action, both criminal and civil, that may be taken in cases of non-compliance; and then to provide guidance as to the Government's approach to enforcement undertakings for these cases.

The guidance starts by explaining the sanctions attached to breaches of certain relevant provisions under the core fuel sector resilience measures, which constitute an offence. It then details the action that may be taken to enforce an offence and the circumstances in which particular action is likely to be taken.

The Guidance then provides guidance as to how the Secretary of State's functions in respect of enforcement undertakings are expected to be exercised.

In addition to requiring statutory guidance on the above, the Act requires the Secretary of State to consult on and then publish a procedure for entering into enforcement undertakings. The draft procedure is appended to the draft guidance, in order to provide both of these sources of information about enforcement undertakings together.

This consultation follows the structure in which the guidance is set out and aims to address each chapter.

The sanctions to which a person may be liable

Chapter 2 of the draft guidance explains the criminal and civil sanctions to which a person may be subject in respect of the offences under Part 12 of the Act.

- 1. Do you have comments on the guidance on the sanctions that may be taken, including the proposed wording of this chapter of the guidance?**
- 2. Would you prefer to see any additional information? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.**

Action that may be taken

Chapter 3 of the Guidance sets out the action that may be taken, which may be to give guidance or information; issue a warning; agree an enforcement undertaking; or prosecute.

- 3. Do you have comments on the guidance on the action that may be taken, including the proposed wording of this chapter of the guidance?**
- 4. Would you prefer to see any additional information? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.**

Circumstances in which enforcement action is likely to be taken

The Department's priority will be to ensure that the risk of disruption to security of supply is being mitigated and disruption is not imminent. Chapter 4 of the guidance sets out the circumstances in which information, a warning, an enforcement undertaking, or prosecution is likely to be used, as well as factors to be considered in determining the appropriate action.

- 5. Do you have comments on the guidance on the circumstances in which enforcement action is likely to be taken, including the proposed wording of this chapter of the guidance?**
- 6. Do you have comments on the guidance in relation to prosecution in this chapter, including the proposed wording?**
- 7. Would you prefer to see any additional information in this chapter? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.**

Enforcement undertakings- how the Secretary of State's functions are expected to be exercised

An enforcement undertaking is designed to make amends for non-compliance and its effects as well as to prevent recurrence. On receipt of an undertaking offer, the Secretary of State will decide whether to accept the offer and if she does, it becomes a binding agreement and must be complied with.

An enforcement undertaking is considered a flexible enforcement option as it provides an opportunity for the responsible person to design their response to non-compliance. It is intended to encourage positive behaviour and is expected to often be appropriate rather than referring the matter for prosecution. Details of how the Secretary of State's functions in respect of enforcement undertakings are expected to be exercised, are provided in chapter 5 of the Guidance.

8. Do you have comments on the guidance with regards to enforcement undertakings and how the Secretary of State's functions are expected to be exercised, including the proposed wording?

9. Would you prefer to see any additional information in this chapter? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

Procedure for enforcement undertakings

The Act requires the Secretary of State to consult on and then publish a procedure for entering into enforcement undertakings. The procedure is set out as a step-by-step process. It is annexed to the draft guidance so that these sources of information about undertakings can be considered together.

10. Do you have any comments on the procedure for entering into enforcement undertakings, including the proposed wording?

11. Would you prefer to see any additional information in the procedure? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

12. Is it useful to publish the procedure for enforcement undertakings together with the guidance?

Additional questions

13. Do you have any comments regarding the overall structure, form, or style of the guidance?

14. Are there any sections of the guidance or the procedure for undertakings you do not think it is necessary to include in the final publication of these? Please refer to relevant paragraph numbers in your answer.

Next steps

Once this consultation closes, we will review all responses before we finalise and publish the final guidance and procedure. Our aim is to publish an overview of the responses and the Department's comments www.gov.uk/government/consultations/core-fuel-sector-resilience-measures-proposed-guidance-on-criminal-and-civil-sanctions on www.gov.uk along with the consultation papers.

This consultation is available from: www.gov.uk/government/consultations/core-fuel-sector-resilience-measures-proposed-guidance-on-criminal-and-civil-sanctions

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