



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

Government response



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## Overview

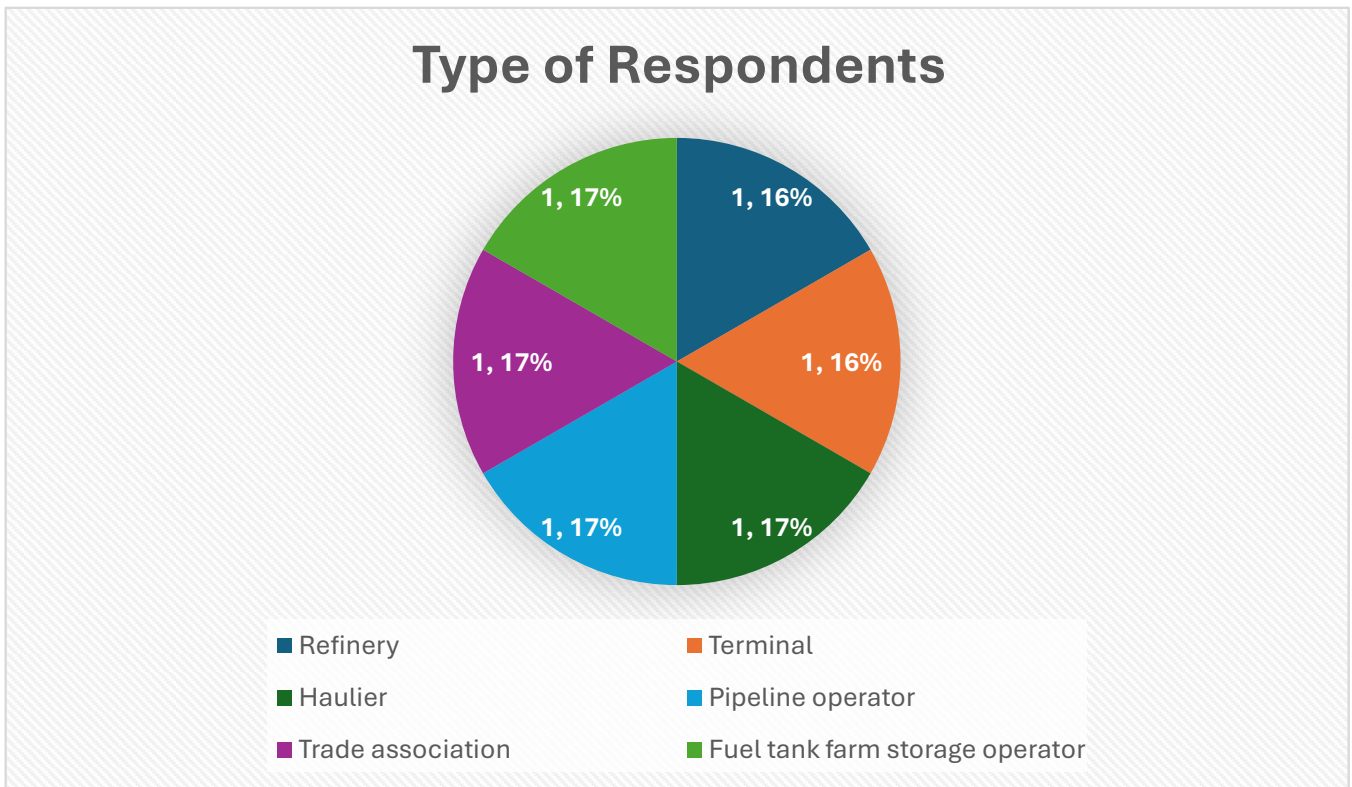
1. The government is committed to ensuring that the UK has secure and reliable energy supplies. This commitment is essential to underpinning a successful, competitive, and open economy. To this end, the Department for Energy Security and Net Zero (DESNZ) is focused on implementing robust measures to enhance the resilience of the core fuel sector, ensuring the continuous and secure supply of fuel to consumers.

## Context

2. The core fuel sector is a critical component of the UK's energy infrastructure. Ensuring the resilience of this sector is vital to maintaining the security of fuel supply, which underpins both economic stability and national security. The sector faces various risks including operational disruptions, supply chain vulnerabilities, and evolving regulatory requirements.
3. The Energy Act 2023 introduced new powers for the government to enforce compliance within the fuel sector, aiming to strengthen resilience and mitigate risks. These powers include both criminal and civil sanctions for non-compliance with core fuel resilience measures.

## Introduction

4. The aim of this consultation was to gather feedback on the proposed guidance for the criminal and civil sanctions and the procedure for entering enforcement undertakings related to the core fuel sector resilience measures under the Energy Act 2023. The consultation sought to understand stakeholder perspectives on the appropriateness of the sanctions, the clarity of the enforcement process, and the overall impact on industry resilience.
5. The consultation was conducted over a period of eight weeks, from 13 May 2024 to 08 July 2024. Methods of engagement included online submission forms and email responses for individuals and organisations. Participants were invited to provide their feedback on specific questions outlined in the consultation document.
6. There were consultation responses from a variety of stakeholders, including major fuel companies through their Trade Association, pipeline operators, independent terminal operators, hauliers and fuel tank farm operators. In total, there were 6 responses sent before the consultation closed.



## Proposals in the guidance

7. The consultation sought feedback on the following key proposals outlined in the draft guidance:
  - I. The guidance proposes both criminal and civil sanctions to enforce compliance. Criminal sanctions are imprisonment and fines, while civil sanctions are enforcement undertakings.
  - II. A structured process for escalating enforcement actions, starting with information and guidance, moving to warning letters, and potentially leading to enforcement undertakings or as a last resort, prosecution.
  - III. Procedures for entering into enforcement undertakings, which are voluntary agreements where the regulated entity commits to certain actions to avoid further enforcement measures.
  - IV. Criteria and circumstances under which prosecution may be pursued as an enforcement action, emphasising that prosecution should be a last resort.

# Summary of responses

## Overview of responses

8. The key themes identified in the responses included concerns about the proportionality of criminal sanctions, the need for clarity and consistency in enforcement actions, and the importance of guidance on enforcement undertakings. Respondents generally supported the structured escalation mechanism but stressed the potential negative impact of severe penalties on industry recruitment and retention.

## Detailed analysis

### Question 1: Comments on sanctions

9. There were 6 responses to this question. Respondents expressed significant concerns about the inclusion of criminal sanctions (e.g., imprisonment) for non-compliance, arguing they are disproportionate and inappropriate for administrative issues. They suggested financial penalties would be more suitable and aligned with other energy sector regulations.
10. Some respondents highlighted that the threat of criminal sanctions could deter people from joining or staying in the industry, which might reduce resilience instead of improving it.

### Question 2: Additional information

11. There were 5 responses to this question. Most respondents did not feel additional information was needed in the guidance but emphasised the importance of clear criteria for enforcement actions.

### Question 3: Sanctions actions

12. There were 6 responses to this question. There was general support for the escalation mechanism from guidance to warning letters, enforcement undertakings, and compliance certificates, provided that criminal sanctions are reconsidered.

### Question 4: Additional information

13. There were 5 responses to this question. No additional information was deemed necessary for this question by most respondents.

### Question 5: Circumstances for enforcement action

14. There were 5 responses to this question. Respondents found the guidance reasonable but reiterated their concerns about criminal sanctions.

**Question 6: Guidance on prosecution**

15. There were 4 responses to this question. The guidance on prosecution was deemed reasonable by most respondents, contingent on the primary concern about criminal sanctions being addressed.

**Question 7: Additional information**

16. There were 3 responses to this question. All respondents stated that no additional information was necessary.

**Question 8: Enforcement undertakings**

17. There were 5 responses to this question. Respondents requested more detailed guidance on enforcement undertakings, including criteria for acceptance and examples of acceptable undertakings.

**Question 9: Additional information**

18. There were 3 responses to this question. No further information was requested.

**Question 10: Procedure for enforcement undertakings**

19. There were 6 responses to this question. No specific comments on this procedure were provided by most respondents.

**Question 11: Additional information in procedure**

20. There were 4 responses to this question. No additional information was necessary.

**Question 12: Publishing procedures together with guidance**

21. There were 5 responses to this question. Respondents agreed that it was useful to publish procedures together with the guidance, subject to concerns about criminal sanctions being addressed.

**Question 13: Structure, form, or style of guidance**

22. There were 3 responses to this question. No comments on the overall structure, form, or style of the guidance were provided.

**Question 14: Sections not necessary for final publication**

23. There were 2 responses to this question. No sections were identified as unnecessary for final publication.

## Key concerns and suggestions

24. The key concerns and suggestions raised by respondents were:
1. **Disproportionality of Criminal Sanctions:** There was a strong preference for financial penalties over criminal sanctions to avoid deterring industry participation and affecting recruitment and retention.
  2. **Clarity and Consistency:** Emphasis on the need for clear criteria and consistent application of enforcement actions to maintain business confidence.
  3. **Guidance on Enforcement Undertakings:** Detailed guidance on enforcement undertakings, including criteria for acceptance and examples of acceptable undertakings, was requested.
  4. **Impact on Business Confidence:** Concerns that severe penalties could undermine business confidence and future investment in the UK fuel sector.
  5. **Collaborative Approach:** Suggestions for establishing joint industry-government and forums to ensure coordinated responses to fuel supply crises and reduce the likelihood of breaches and sanctions.

## Disproportionality of criminal sanctions

### Summary of responses

25. Three respondents expressed concerns about the inclusion of criminal sanctions (e.g., imprisonment) for non-compliance, arguing they are disproportionate and inappropriate for administrative issues. Concerns were raised about the disproportionality of criminal sanctions, particularly imprisonment, for non-compliance that is not safety related.
26. They suggest financial penalties would be more suitable and aligned with other energy sector regulations. Another respondent suggested civil sanctions focused on corporate liability should be the default option.

### Government response

27. Government acknowledges the concerns raised about the disproportionality of criminal sanctions. However, it is important to note that the Energy Act 2023 mandates criminal sanctions for certain offences that are created under the Act. As such, they are mandated by legislation and cannot be amended through the guidance.
28. Criminal sanctions are a necessary component of the framework to ensure the highest levels of compliance within the core fuel sector. They serve as a crucial deterrent against egregious or repeated non-compliance. Government emphasises that prosecution will be pursued only as a last resort and in cases where non-compliance poses significant risks.



29. Government's primary approach will be to work collaboratively with industry stakeholders to achieve compliance through guidance, warning letters, and civil sanctions such as enforcement undertakings wherever possible. By prioritising these measures, government aims to support the industry in meeting its obligations without the need to resort to criminal prosecution.
30. Government will support individuals and organisations in meeting their obligations and assure all stakeholders that enforcement actions will be proportionate and transparent.

## Clarity and consistency

### Summary of responses

31. Respondents emphasised the need for clear criteria and consistent application of enforcement actions. There was a call for more detailed guidance on how and when different enforcement actions would be applied.
32. Respondents particularly welcomed the use of warning letters but requests consistency while one respondent requested clarity on when warning letters are used and when they are not.
33. Another respondent recommends that warning letters should always be the first step in enforcement.

### Government response

34. The government acknowledges the need for clear criteria and consistent application of enforcement actions. A clearer outline of the steps involved in enforcement actions, from initial guidance to final sanctions will be highlighted in the guidance, ensuring that stakeholders understand each stage of the process. This will help maintain industry confidence and ensure fair treatment across the sector.
35. Government will continue to engage with stakeholders to address any concerns or inconsistencies in the enforcement process. This will enable continuous improvement and ensure that enforcement actions are fair and transparent.

## Guidance on enforcement undertakings

### Summary responses

36. Respondents requested more detailed guidance on what constitutes an acceptable enforcement undertaking, including criteria for acceptance and examples of acceptable undertakings. They sought clarity on the process and expectations.

37. Two respondents requested more detailed guidance on what constitutes an acceptable enforcement undertaking, including draft forms and clear criteria for assessment. One respondent emphasised the need for a mechanism to resolve issues before reaching enforcement and suggests a detailed flowchart to illustrate the enforcement process. Another suggested more information on the timing and content of enforcement undertakings.

### **Government response**

38. The government will provide additional detailed guidance on enforcement undertakings, including criteria for acceptance and concrete examples.
39. The government will aim to define the criteria for accepting enforcement undertakings, outlining the conditions and actions that stakeholders must meet to enter into these agreements. This could include specifying acceptable actions and measures that they can take to demonstrate compliance; however, it should be highlighted that this will not be an exhaustive list and stakeholders must seek advice before offering an enforcement undertaking.
40. The government will aim to provide concrete examples of acceptable enforcement undertakings, and where necessary, illustrating the types of commitments and corrective actions that have been successfully implemented in similar situations. These examples will serve as a guide for stakeholders to develop their own undertakings. This will help stakeholders understand the process and expectations, facilitating a more straightforward path to compliance.

## **Impact on business confidence and investment**

### **Summary response**

41. Two respondents suggested that severe penalties could undermine business confidence and future investment in the UK fuel sector.

### **Government response**

42. Government recognises the concerns about the potential negative impact of severe penalties on business confidence and investment. Government approach will focus on proportionate enforcement actions, with an emphasis on using warning letters in the first instance and enforcement undertakings to rectify non-compliance.
43. Government will ensure that enforcement actions are proportionate to the nature and severity of the non-compliance. This means reserving criminal sanctions for the most severe breaches that pose significant risks to public safety or national security.

44. Government will aim to provide clear and transparent communication about the enforcement process, criteria, and potential consequences when there has been suspected non-compliance so businesses understand their expectations and reduce uncertainty.
45. As always, government will continue to offer guidance and support to businesses to help them achieve compliance and avoid enforcement actions. This will help maintain a stable and predictable regulatory environment, encouraging continued investment in the UK fuel sector.

## Positive acknowledgment of the structured escalation mechanism

### Summary response

46. Four respondents acknowledged and support the structured escalation mechanism from guidance to warning letters to enforcement undertakings. This approach was seen as fair and reasonable.

### Government response

47. Government appreciates the support for the structured escalation mechanism. Government will ensure that the early stages of the escalation mechanism prioritise prevention and education.
48. By providing clear guidance and support from the outset, government aims to address potential issues before they escalate to more serious enforcement actions. This process will be maintained, ensuring that enforcement actions are fair and reasonable.
49. Government will aim to maintain transparency and open communication throughout the escalation process and stakeholders will be kept informed of their status and the steps being taken, ensuring they understand the reasons for any enforcement actions and have opportunities to respond and make representations.

## Additional information and concrete examples

### Summary response

50. There was a request for more concrete examples and scenarios within the guidance to illustrate how the enforcement process would work in practice. This would help stakeholders better understand the expectations and requirements for compliance.

## **Government response**

51. The government will include more concrete examples and scenarios in the guidance to illustrate how the enforcement process works in practice. These will include a variety of illustrative scenarios that demonstrate different types of non-compliance and the corresponding enforcement actions. These scenarios should provide practical insights into how the enforcement process would be applied in real-world situations. This will help stakeholders better understand the expectations and requirements, enhancing their ability to comply.
52. While the government recognises that there have not been cases of non-compliance so far, there is an opportunity to create a comprehensive Frequently Asked Question page on Gov.uk, addressing common queries and concerns related to the enforcement process as time goes by. This section will be regularly updated based on stakeholder feedback and emerging issues.
53. The government will aim to update the guidance as a whole regularly to reflect changes in legislation, enforcement practices, and stakeholder feedback. This will ensure that the guidance remains relevant, accurate, and useful.

## **Importance of a collaborative approach and joint forums**

### **Summary response**

54. There was strong support for establishing joint industry-Government forums to ensure ongoing dialogue and coordination. One respondent stated that this is seen as valuable for addressing issues collaboratively and enhancing fuel supply resilience and to ensure compliance.
55. One respondent suggested a more collaborative approach where actions can be discussed and agreed upon with Department staff, rather than guessing what Secretary of State will accept.

### **Government response**

56. The government strongly supports the establishment of joint industry-government forums. These forums will ensure ongoing dialogue and coordination, allowing government to address issues collaboratively and enhance fuel supply resilience.
57. The government will continue to engage with stakeholders to discuss current issues, emerging risks and how to reduce any burden that might contribute to non-compliance. These meetings will provide a structured environment for open communication and collaborative problem-solving.
58. The government will continue to promote the sharing of information and data from industry stakeholders to improve situational awareness and facilitate coordinated responses to potential disruptions. The government is committed to working closely with industry stakeholders to achieve our shared goals.

## Overall conclusion

59. The government extends its gratitude to all participants for their valuable contributions to this consultation. Your feedback has been instrumental in shaping the final guidance, ensuring it is fair, clear, and effective in supporting the resilience of the core fuel sector.
60. The insights and suggestions provided have highlighted critical areas for improvement and have helped us create a more balanced and practical approach to enforcement. By focusing on proportionate enforcement actions, enhancing clarity and consistency, and fostering collaborative dialogue, we aim to maintain a robust and resilient fuel supply sector in the UK.
61. As we move forward, we will continue to improve and update the guidance based on stakeholder feedback and emerging issues. Your participation and engagement are crucial to this ongoing process, and we welcome your continued input.
62. We look forward to continuing our engagement with stakeholders and working together to address any future challenges. For further questions or follow-up, please contact the Downstream Oil Resilience Team

## Next steps

63. The guidance document will be updated to reflect the decisions made based on the consultation feedback and will be published on GOV.UK. Government will continue to work stakeholders to ensure there is coordination and dialogue regarding compliance and to address emerging issues.

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# Annex: Enforcement Undertaking (EU) draft Offer Form

## Energy Act 2023, Part 12, Section 284

For DESNZ use only	
Name of Offeror:	
Date Received (DD/MM/YYYY):	
Reference number (if relevant):	

1. An Enforcement Undertaking (EU) is a voluntary, legally binding agreement which is offered to the regulator where there are reasonable grounds to suspect that an offence has been committed. Within an EU, you undertake to complete specified action within a specified timeframe. Within this form, you will be asked to propose such actions, with accompanying timeframes, which, if accepted, will constitute your EU.
2. How to complete this form: Please complete Parts 1, 2, 3 and 4 of this form including the Declaration in Part 5.
3. Please refer to the guidance on criminal and civil sanctions which includes guidance on consideration by the Secretary of State of an EU.
4. This form should be completed by a person authorised to act on behalf of the business or organisation submitting the EU Offer.
5. **Note:** If necessary, please complete your offer on a separate sheet and attach to this form when submitting your offer to us.

Once complete, please submit your offer by sending it to:

- **By post:** Downstream Oil Resilience team, Department for Business & Trade, Old Admiralty Building, London, SW1A 2BL, or;
  - **By email:** [downstreamoilteam@energysecurity.gov.uk](mailto:downstreamoilteam@energysecurity.gov.uk)
6. **Advice and guidance:** If requested, we will provide you with advice and guidance on making an offer, however, we will not enter into negotiations with you, as the actions you wish to offer are a matter for you. You may also wish to seek your own independent legal advice.

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7. **Further assistance:** If you require any help or assistance with submitting or completing this form, please contact us:

- **By telephone:** 0300 068 6900 (9am-5pm), or;
- **By email:** [downstreamoilteam@energysecurity.gov.uk](mailto:downstreamoilteam@energysecurity.gov.uk)

8. **Our standards:** Whilst there is no prescribed time frame in which we are required to respond to EU offers, the officer who has been assigned your offer will aim to make contact with you within 28 calendar days, with their contact information, to support you with any initial feedback on your offer. Once we are in receipt of an offer which meets the basic requirements of an EU, we will then aim to make a formal assessment of your offer within 60 calendar days. This may take longer depending on factors such as whether the offer is proactive or reactive, the nature, number and complexity of the offences in question or if further information is required. We will aim to provide you with regular updates on our investigation and will inform you of when you can expect the next update.

## Part 1- Proposer

This EU is being offered by:

<b>Title</b> (Mr, Mrs, Miss or other- please specify)		
<b>First Name and Last Name</b>		
<b>Name of business or organisation</b>		
<b>Company registration number</b>		
<b>Type of business or organisation</b> (Please put a 'X' in the relevant box)	Registered company (or similar)	Partnership company
<b>Address</b>		
<b>Contact numbers</b>		
<b>Email</b>		
<b>Main contact</b> (This is the person who we can contact regarding the offer. <b>Only complete if different to the contact listed above</b> )	<b>Name</b>	
	<b>Job title</b>	
	<b>Contact number</b>	

## Part 2- Type of offer (please tick the appropriate box)

You are self-reporting a relevant offence prior to the Department for Energy Security and Net Zero commencing investigations.		
You are offering an EU for a relevant offence which the Department for Energy Security and Net Zero has already started investigating.		
<b>Investigation number</b> (if known)		
<b>Investigation officer</b> (if known)		

## Part 3- Description of act or omission which constitutes the alleged offence (s) for which this offer is being made:

3.1 Please place a 'X' in the relevant box indicating the relevant offence (s) for which you are offering an EU (please refer to the guidance on criminal and civil sanctions on <a href="#">[insert link]</a> or the official regulations on <a href="#">[insert link]</a> for details of the relevant offences for which you can offer an EU). You may also wish to seek your own independent legal advice.		
Directions to a particular core fuel sector participant	Section 271	
[Corresponding powers to make regulations] <sup>1</sup>	Section 272	
Power to require information	Section 275	
Duty to report incidents	Section 275	
[Provision of information at specified intervals] <sup>2</sup>	Section 276	
False Statements etc	Section 280	
3.2 Date(s) of relevant offence(s). (Please specify the exact date or on or around/between dates).		
3.3 Location of relevant offence(s) (Note: Please specify full postal address)		
3.4 In your own words, please describe what happened.		

<sup>1</sup> The form will be updated to reflect any regulations created under section 272 of the Energy Act 2023.

<sup>2</sup> The form will be updated to reflect the implementation of this secondary legislation.



3.5 Please provide details of the level of disruption this has caused and how the security of supply has been impacted (if relevant, please include supply levels))
3.6 Have any third parties been affected by the relevant offence(s), and if so, what steps have been taken to remedy the impacts felt by them?
3.7 Have you taken action to ensure that the alleged offence(s) do not reoccur? (If so, please detailed these actions below).

#### Part 4- EU Offer

**You must complete the columns marked \* in full for each action being offered.** If any action being offered does not contain clear and relevant actions, clear completion criteria or clear completion dates, it will be returned to you and may even be rejected if you fail to provide it within a further specified time. Each action should also be sequentially numbered and entered onto a separate line.

*Actions being offered	*Completion dates	*Completion criteria	Cost of completing actions (£)
<b>Box 1</b>	Action(s) to secure that the position is, so far possible, restored to what it would have been if the alleged offence(s) had not been committed.		

<b>Box 2</b>	Action(s) to secure that the position is, so far as possible, restored to what it would have been if the alleged offence(s) had not been committed		
<b>Box 3</b>	Action(s) to identify and consult with any person affected by the alleged offence(s)		
<b>Box 4</b>	Action(s) to benefit any person affected by the alleged offence(s)		
<b>Box 5</b>	Where restoration of the disruption arising from the alleged offence(s) is not possible, action that will secure equivalent benefit or improvement to security of supply		
<b>Box 6</b>	Reimbursement of the DESNZ costs necessarily incurred until the time this offer may be accepted (Please note we normally expect payment to be made within 28 calendar days of formal acceptance of your offer)		
<b>*Actions being offered</b>	<b>*Completion dates</b>	<b>*Completion criteria</b>	<b>Cost of completing actions (£)</b>
<b>Box 7</b>	Contribution to cover the DESNZ costs that subsequently incur by checking your compliance with the offer and issuing an EU Completion Certificate (Please note we normally expect payment to be made within 28 calendar days of formal acceptance of your offer)		
<b>Box 8</b>	Aspects of your offer or supporting documents that are not already made on this form (Please include the relevant title, date and reference number of any supporting documents).		

9. Acceptance of an EU by the Department for Energy Security and Net Zero which involves the payment of a sum of money to a third party does not extinguish the rights of such a party to institute civil proceedings on their own account for loss and damages associated with the incident in respect of which the EU has been offered.

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## Part 5- Declaration

- I understand that making this offer does not constitute an admission of guilt for any alleged offence(s) to which it relates;
  - I understand that DESNZ may accept or reject this offer;
  - I understand that I do not have a statutory right of appeal against DESNZ's decision to reject this offer but can request an independent internal review of the decision to reject this offer, which is expected to make within 14 days;
  - I understand that unless I fail to comply with it, if an EU as shown in Part 4 of this form is accepted, I may not at any time be convicted of the alleged offence(s);
  - I understand that if I fail to comply with the undertaking or any part of it, I may be prosecuted for the alleged offence(s) or have an alternative sanction imposed on me;
  - I understand that I may be required to provide DESNZ with sufficient information to determine that the undertaking has been complied with;
  - I understand that if at any time I am found to have given inaccurate, misleading or incomplete information in relation to this undertaking, it will be rejected or if previously accepted, I will be regarded as not having complied with it and any Completion Certificate will be revoked;
  - DESNZ reserves the right to keep a copy of the EU on file but will ensure that it is in line with data protection regulations;
10. DESNZ may pass it on to its officials/representatives to do these things on its behalf. You should ensure that any persons named on this form are informed of these purposes;
- I understand that this EU will remain in force until such a time as the Department for Energy Security and Net Zero has issued me with a Completion Certificate or I have been notified in writing that I have failed to comply with it;
  - I understand that acceptance of an EU by the Department for Energy Security and Net Zero which involves the payment of a sum of money to a third party does not extinguish the rights of such a party to institute civil proceedings on their own account for loss and damages associated with the incident in respect of which the EU has been offered;
  - I understand that any third party payment offered as part of this EU, must be an unrestricted donation from which I will derive no benefit of any type; and
  - I understand that the Department for Energy Security and Net Zero's acceptance of this EU does not affect its power to investigate a contravention arising from future conduct or pursue a criminal prosecution, or to lay charges or exercise other civil or regulatory powers, for matters not expressly dealt with by this undertaking.

**Date** .....

**Full Name**.....

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**Signed** .....

**Title** .....

**Part 6- Submitting your offer**

11. This pro-forma is not prescribed by law, and you may submit your offer in an alternative written form (which must include the full Declaration from this offer form), however, it would help us to assess your offer more promptly if it is made using this form. Please submit your offer by sending it to:

- **By post:** Downstream Oil Resilience team, Department for Energy Security and Net Zero, Old Admiralty Building, London, SW1A 2AY, or;
- **By email:** [downstreamoilteam@energysecurity.gov.uk](mailto:downstreamoilteam@energysecurity.gov.uk)

12. Please do not send your offer directly to the lead investigator (if known), as this may cause delay.

**For DESNZ use only:**

**Part 7- Accepting or rejecting the offer (please place a 'X' in the appropriate box)**

**Box A-** Only complete this box if the offer has been agreed for **acceptance**.

<input type="checkbox"/>	We have <b>accepted</b> your offer
The Department for Energy Security and Net Zero has reasonable grounds to suspect that you have committed the following relevant offence(s) and hereby accepts this EU in relation to those offence(s):	
<i>[Please specify the relevant legislation, section/regulation number and brief particulars – delete before returning]:</i>	

**Box B-** Only complete this box if the offer has **rejected**

<input type="checkbox"/>	We have <b>rejected</b> your offer
The Department for Energy Security and Net Zero has carefully considered your offer in accordance with our published guidance and hereby rejects your offer for the following reasons:	
<i>[Please specify why the offer has been rejected e.g. Prosecution is more appropriate for this offence etc – delete before returning]:</i>	

**Date**..... **Signature**.....

**Name of DESNZ Signatory**.....

**Title of DESNZ Signatory**.....

**Schedule 1 – Further information on making your offer**

**Guidance note on completing Part 4 of the EU Offer form.**

**Box 1: Action(s) to secure that the alleged offence(s) does not continue or recur.**

13. This is a legislative requirement; we will not accept an offer that does not address this. We would normally expect that offending has ceased entirely or where this is not possible, that it will within a period of time which is clearly set out in the offer.

14. We expect an offer to go beyond the minimum that an offender would need to do to simply comply. In the case of corporate legal entities, we will be unlikely to accept an offer where it is not clear that senior management have approved the undertaking. Senior management must prove that they are committed to overseeing compliance with statutory obligations under Part 12 of the Act and committed to preventing further non-compliance in order to avoid enforcement action being taken.

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Examples of what could be included in an internal compliance program:

- details of any monitoring and reporting mechanisms to be adopted;
- management action plans including the assignment of responsibility for the compliance program to a named senior manager of the person;
- infrastructure upgrades;
- the identification of compliance issues and operating procedures for compliance;
- the development and dissemination throughout the organisation of a clear compliance policy;
- the development and delivery of a compliance training program to key personnel groups within the organisation;
- the establishment of permanent procedural checking and monitoring mechanisms, such as nominating a compliance officer and procedures to prevent future breaches and to ensure that any potential breaches are not only averted but also reported to senior management;
- joining any relevant accredited compliance scheme;
- a requirement to report to us at a specified time on the steps taken to implement the compliance program.

15. However, these cannot be open ended commitments and proposals need to have clear implementation dates so your offer can be assessed for “completion” and discharged.

**Box 2: Action(s) to secure that the position is, so far as possible, restored to what it would have been if the alleged offence(s) had not been committed.**

16. This is a legislative requirement; we will not accept an offer that does not address this. In cases where there has been a disruption to, or failure of, continuity of supply of core fuels and the participant failed to act under one of the offences listed on page [X]. The offer must include actions to remedy the issue and repair damage as far as is reasonably possible. This action should relate directly to the impact of the offence.

17. An EU enables an offender to address the offending in a constructive way and avoid the stigma and reputational damage of criminal conviction and the legal costs. Given these advantages, the Department for Energy Security and Net Zero does not consider that payments to be made as part of an EU should simply equate to the financial advantage gained by offending.

18. This does not include actions that you would normally need to do to comply with your permit or the law.

**Box 3: Action(s) to identify and consult with any person affected by the alleged offence(s)**

19. Where third parties have been impacted by the offending, such as contracted companies or customers, the offer should contain actions to be taken to identify them and assess the impact on them. Where agreements have been reached, this should be evidenced to us in writing at the time your offer is made. Then evidence of a solution or other

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satisfaction should be supplied before the proposed completion date of this action in order for us to consider an application for a Completion Certificate for the EU.

**Box 4: Action(s) (including the payment of a sum of money) to benefit any person affected by the alleged offence(s)**

20. This is a legislative requirement and we will not accept an offer that does not address this. Where, for instance in relation to Box 3 above, impacted third parties have been identified, if there are actions (including payments to them) to be made then the completion date for this must be clearly set out in Part 4. We will require evidence of these in writing before we will consider an application for a Completion Certificate for the EU.

21. *Acceptance of an EU by the Department for Energy Security and Net Zero which involves the payment of a sum of money to a third party does not extinguish the rights of such a party to institute civil proceedings on their own account for loss and damages associated with the incident in respect of which the EU has been offered.*

**Box 5: Where restoration of the disruption arising from the alleged offence(s) is not possible, action that will secure equivalent benefit or improvement to security of supply**

22. This is a legislative requirement, and we will not accept an offer that does not address this. This applies where there has been a disruption to, or failure of, continuity of supply of core fuels and the participant failed to act under one of the offences listed on page [X].

23. We will require evidence of a detailed plan which includes both options to resolve the impacts of the disruption as well as evidence that the offence will not continue or reoccur. Offers should include clear links to resolving the breach preferably related to the legislation.

24. [I note that 284(3) provides that EUs include undertakings to take action “(b) of a description specified in regulations made by SoS” - are there any such regulations in existence? If so are there any relevant purposes we would want to set out here in a separate section?]

**Box 6: Contribution towards the DESNZ costs necessarily incurred until the time this offer may be accepted**

25. In accordance with the Energy Act 2023, the aim of the legislation is that the costs of offending fall on the least compliant, levelling the playing field for those that have complied, we are unlikely to accept an offer which leaves either the taxpayer or legitimate business effectively subsidising the cost we have incurred in dealing with an offender.

26. We are unlikely therefore to accept an offer if it does not address the costs we have or will (see below) incur in investigating the offence. These costs however will invariably be less than those which would be expected should the matter proceed to court. Any contribution to our costs should be made directly to us and not to a third party.

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27. Where you are making an offer proactively you should still include an element for our costs as, before we can accept an offer, the legislation requires that we must have 'reasonable suspicion that an offence has been committed'. This means we must have confidence that an offer addresses the entirety of the offending, and that the assessment of any avoided costs is accurate. We will usually conduct a brief investigation when we receive an offer, this also enables us to ensure that alternative sanctions can be pursued should an undertaking not be completed.

**Box 7: Contribution towards the DESNZ costs necessarily incurred for subsequent compliance monitoring and discharge of this EU**

28. As in the guidance note to Box 6, above, we are unlikely to accept an offer which does not address the costs we will incur in monitoring the compliance and discharge of an offer.

**Box 8: Aspects of your offer or supporting documents that are not already made on this form.**

29. In order for us to take into account all the parts of your offer, it must be clear what is and is not included. If there are parts of the offer, e.g. technical procedures or works, that are not in the schedule because they are contained in other documents, then they should be referenced here. Those other documents should also be signed and dated along with this offer form.

**General principles – Accepting or rejecting EU offers**

30. We will only consider accepting an EU offer when:

- we believe that a breach of relevant legislation has occurred; and
- we consider the EU to be an appropriate regulatory outcome having regard to the significance of the issues concerned to the environment and the community.

31. We will not normally accept an offer:

- for an offence which has led to a government response which could have been avoided had the incident been reported, or where we have commenced legal proceedings;
- in cases involving intent or of the most severe supply impact (but we do not rule it out, as discretion will always apply);
- where we have already determined that a prosecution is appropriate in the public interest;

**Factors in favour of accepting an EU offer**

32. Factors we will consider when deciding whether acceptance of an EU is an appropriate regulatory outcome include:



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- whether we feel the person is likely to comply with it in the light of their compliance history;
  - the nature of the offence and the regulatory impact of the undertaking compared to that of other forms of enforcement remedy;
  - the prospects of securing a timely and satisfactory outcome where this is in the public interest.

33. We will seek to ensure that EUs and their development, implementation and monitoring are cost neutral to DESNZ.

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## **Factors in favour of rejecting an EU offer**

34. We will not accept an EU offer if it:

- contains a clause denying liability;
- contains any clause that sets up defences for possible non-compliance with an EU;
- does not contain payment of our costs;
- contains information that is not provided openly, fully and in good faith.

## **Examples of what could be included in an EU offer**

35. The EU may also include:

- the name of a senior manager who is responsible for monitoring and complying with the undertaking; and
- the name of the DESNZ officer to whom the contact officer must report.

36. Generally, the person giving the undertaking will be responsible for:

- monitoring how the undertaking is implemented; and
- reporting this to DESNZ in the specified manner.

37. The way the person giving the undertaking proposes to do this must be set out in the EU offer and we must be satisfied that this is adequate. In resolving any matter we want to find ways to redress the offence.

38. Further information on EUEU is available on our website at [insert link].

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This publication is available from: [www.gov.uk/government/consultations/core-fuel-sector-resilience-measures-proposed-guidance-on-criminal-and-civil-sanctions](https://www.gov.uk/government/consultations/core-fuel-sector-resilience-measures-proposed-guidance-on-criminal-and-civil-sanctions)

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