

EXPLANATORY MEMORANDUM TO

PART 12 THE ENERGY ACT 2023: CORE FUEL SANCTIONS GUIDANCE

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Department for Energy Security and Net Zero and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Michael Shanks, Minister for Energy at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Emily Reves Deputy Director for Energy Resilience at the Department for Energy Security and Net Zero confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Email: downstreamoilteam@energysecurity.gov.uk with any queries regarding the guidance.

Part One: Explanation, and context, of the Guidance

4. Overview of the Guidance

- 4.1 The guidance which must be issued under Section 285 of the Energy Act 2023 provides clarity on the application of criminal and civil sanctions to ensure compliance with Part 12 of the Act. The core fuel measures under Part 12 are aimed at securing resilience within the core fuel sector. This sector is a vital part of the UK's energy infrastructure, and the resilience measures introduced under the Act are designed to address potential vulnerabilities that could impact fuel supply continuity.
- 4.2 The sanctions guidance sets out the enforcement framework, detailing both criminal and civil measures available to ensure compliance with statutory requirements.

Where does the guidance extend to, and apply?

- 4.3 The extent of this guidance is the United Kingdom.
- 4.4 The territorial application of this guidance is the United Kingdom.

5. Policy Context

What is being done and why?

- 5.1 The core fuel sector, which includes refineries, storage facilities, distributors, and other critical infrastructure, is vital to the security of the UK's fuel supply. Ensuring

the resilience of this sector is essential as disruptions can lead to significant impacts which could affect consumers.

- 5.2 The sector faces increasing risks from operational vulnerabilities, supply chain disruptions, and evolving geopolitical pressures. Recent events, such as the COVID-19 pandemic and geopolitical tensions in regions affecting fuel imports, have underscored the critical need for robust measures to ensure supply continuity.
- 5.3 Part 12 of the Energy Act 2023 introduced statutory resilience measures to provide the government with comprehensive powers to manage and mitigate these risks. These measures include civil and criminal sanctions to encourage compliance.
- 5.4 The guidance as required by Section 285 of the Act provides the framework for implementing these enforcement measures, detailing when and how DESNZ may intervene to address non-compliance with Part 12. The policy intent is to create a clear and consistent approach to enforcement, enabling the government to take decisive action to uphold resilience while also encouraging a collaborative relationship with industry participants.
- 5.5 By establishing clear consequences for non-compliance, the sanctions framework serves as a deterrent against actions that could compromise fuel supply resilience. Criminal sanctions, which include fines and imprisonment, are reserved for severe offences, while enforcement undertakings allow for early intervention in less serious cases. This layered approach is designed to prevent minor breaches from escalating into serious threats to supply continuity.
- 5.6 The framework seeks to maintain sector stability by encouraging compliance in a way that minimises disruption to business operations. The escalation process, which begins with guidance and warning letters before progressing to sanctions, allows businesses to rectify issues without facing immediate punitive actions. This structured approach addresses industry concerns about the potential impact of heavy penalties on business confidence, recruitment, and retention within the sector.
- 5.7 For non-compliance that poses a significant risk to public safety or national security, the framework allows for more stringent enforcement. Criminal sanctions, including imprisonment, serve as a strong deterrent against actions that could have severe consequences for fuel supply continuity. A referral for criminal prosecution would only occur in cases where civil measures have proven ineffective or where offences are particularly egregious.
- 5.8 DESNZ is committed to applying enforcement actions in a way that is proportional, flexible, and collaborative. Enforcement actions will be proportional to the nature and severity of non-compliance. For example, DESNZ will generally seek to address first-time or minor breaches through guidance and support, allowing industry participants the opportunity to rectify issues without immediate penalties. More serious or repeated demonstrations of non-compliance will lead to escalated sanctions, with criminal prosecution as a last resort.
- 5.9 Civil sanctions, particularly enforcement undertakings, provide flexibility in addressing non-compliance. An enforcement undertaking is a legally-binding voluntary agreement by a responsible person to take corrective actions to achieve compliance. This approach enables businesses to propose practical solutions to rectify non-compliance, allowing them to address issues in a way that best suits their operations while meeting statutory requirements.

6. Consultation

Summary of consultation outcome and methodology

- 6.1 The consultation on the guidance for criminal and civil sanctions and the procedures for entering enforcement undertakings as required under Section 285(3), was publicly opened to the public to comment on if they had an interest. Respondents included a variety of key industry participants, such as major fuel companies (represented through their trade association), pipeline operators, independent terminal operators, hauliers, and airport fuel tank farm operators.
- 6.2 Given the potential impact of the guidance on sector operations and resilience, these groups provided valuable insights on how sanctions and enforcement undertakings would affect compliance and business confidence. DESNZ conducted the [consultation](#) over an eight-week period, from 13 May to 8 July 2024. The consultation document outlined specific questions regarding the appropriateness of sanctions, the clarity of enforcement procedures, and the expected impact on industry resilience.
- 6.3 In total, DESNZ received six responses to the consultation from stakeholders across the core fuel sector. These responses were used to inform adjustments to the guidance and ensure that the enforcement framework aligns with both government objectives and industry concerns.
- 6.4 Respondents expressed strong support for a collaborative, structured escalation mechanism. They advocated for joint industry-government forums to discuss compliance and coordinate responses to fuel supply issues. DESNZ acknowledged this input by committing to ongoing engagement with stakeholders through these forums to support compliance and prevent breaches.
- 6.5 Respondents raised concerns that criminal sanctions, particularly imprisonment, were disproportionate for certain non-compliance issues. Many felt that criminal penalties could deter individuals from joining or staying within the sector, potentially affecting resilience. Industry participants recommended that DESNZ emphasise civil enforcement measures to achieve compliance. In response, DESNZ clarified that criminal sanctions would only be used as a last resort in cases of repeated non-compliance and would not apply to minor administrative issues.
- 6.6 Stakeholders highlighted the importance of clear criteria and consistent application of enforcement actions. They suggested that warning letters should be the first step in addressing non-compliance, as this approach would enable businesses to rectify issues without immediate sanctions. DESNZ responded by strengthening the guidance to provide a clear outline of the escalation process, from guidance to warnings and ultimately to pursuing sanctions only if required. This approach supports transparency and fair treatment across the sector.
- 6.7 Participants requested detailed guidance on enforcement undertakings, specifically around acceptable criteria and examples. In response, DESNZ expanded the guidance to include criteria for acceptable undertakings and illustrative examples, offering clarity on how stakeholders can proactively address non-compliance through voluntary corrective actions.
- 6.8 Concerns were expressed regarding the potential negative impact of severe penalties on business confidence. Respondents feared that overly harsh sanctions could discourage investment in the sector. DESNZ addressed this feedback by committing to proportionate enforcement actions, prioritising civil measures and considering

referral for criminal prosecution only for serious threats to energy security or national security.

- 6.9 The consultation feedback led to several significant changes in the guidance. DESNZ incorporated more specific examples, detailed criteria for enforcement undertakings, and enhanced clarity on the escalation process for enforcement. By focusing on proportionate, transparent enforcement actions and continuing collaboration with industry, DESNZ aims to strengthen sector resilience while supporting business stability and confidence.
- 6.10 The final government response to the consultation was published in September 2024 on [GOV.UK](https://www.gov.uk). It includes a summary of responses and the government's rationale for the changes made to the guidance, ensuring transparency and accountability in the consultation process.

Part Two: Impact and the Better Regulation Framework

7. Impact Assessment

- 7.1 A full Impact Assessment has not been prepared for this guidance because the guidance is explaining the provisions of the Act, and an impact assessment has been completed for those provisions as part of parliamentary passage of the Energy Act 2023.
- 7.2 The implementation of the measures in Part 12 aims to reduce the risk of significant economic and social impacts arising from disruptions to fuel supplies, whether due to operational, financial, or other external factors. The guidance sets out how sanctions will be used, which in turn deters non-compliance; the guidance is expected to reduce the likelihood, volume, and duration of supply disruption. An impact assessment for the core fuel resilience measures in the Energy Act 2023 was published alongside the Act and includes an assessment of the costs of the introduction of sanctions.

Impact on businesses, charities and voluntary bodies

- 7.3 The downstream oil sector, comprising refineries, terminals, pipeline operators, and other critical infrastructure entities, will incur negligible costs as a result of familiarising themselves with the guidance.
- 7.4 Small and micro-businesses, such as independent forecourt operators, are largely exempt unless their operations exceed certain thresholds.
- 7.5 The guidance provides clear criteria for compliance, reducing uncertainty for businesses. Enforcement undertakings offer flexibility, allowing businesses to propose tailored corrective actions rather than facing immediate penalties.
- 7.6 By applying consistent compliance standards, the guidance ensures a level playing field for all market participants, avoiding disproportionate impacts on smaller operators while maintaining sector-wide accountability. The impact assessment suggests that non-compliance is expected to be low due to the high level of compliance culture within the sector and the deterrent effect of the sanctions.
- 7.7 The guidance is not expected to directly impact charities or voluntary bodies as the measures focus exclusively on businesses in the downstream oil sector, such as

refiners, importers, and distributors, with no requirements or obligations extended to charities or voluntary organisations.

- 7.8 Charities and voluntary bodies, which generally operate outside the scope of commercial fuel supply chains, are not involved in the activities regulated by the Energy Act 2023.
- 7.9 There is no significant impact on the public sector because the guidance and the core fuel resilience measures do not impose significant new financial burdens on taxpayers.

8. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 8.1 DESNZ will carry out periodic reviews of the guidance to ensure it remains effective, relevant, and aligned with the needs of the sector. The review process will focus on measuring the effectiveness of the guidance by monitoring compliance rates and enforcement outcomes. If necessary, the guidance will be updated to address identified gaps, enhance clarity, or reflect lessons learned from enforcement actions and legal outcomes.
- 8.2 Updated guidance will require re-laying in draft before both Houses.

Part Three: Statements and Matters of Particular Interest to Parliament

9. Matters of special interest to Parliament

- 9.1 The guidance is laid before Parliament as required by section 286 of the Energy Act 2023. Under Section 286, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament before it may be issued under section 285. The guidance provides a detailed outline of enforcement actions under the Act, covering civil and criminal sanctions as well as the procedural framework for entering into enforcement undertakings.

The Relevant European Union Acts

- 9.2 This guidance is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).