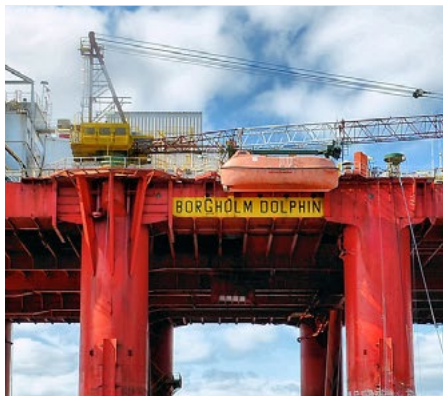


## Government consults on proposals to strengthen UK fuel supply resilience



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On 17 October 2017, the Department for Business, Energy and Industrial Strategy (BEIS) launched a consultation in relation to proposed measures to strengthen the resilience of downstream oil supply in order to maintain consistent fuel supply to UK consumers.

### Why has the Government made these proposals?

As oil-based fuels accounted for over 40% of the UK's final energy demand in 2016, BEIS considers it vital to ensure that downstream oil supply is resilient. Fuel supply resilience requires the downstream oil sector to have the ability to protect against, react to, and recover from any fuel supply disruptions in order to ensure a reliable and continuous supply of fuel across the UK.

The Government currently has limited powers to monitor and regulate fuel supply, and such powers are often only available during an emergency or crisis situation:

- Under the Energy Act 1976, the Government has wide powers to regulate or prohibit the production and supply of fuel supplies if there is an actual or threatened emergency affecting the supplies.
- The Government can make directions under the Offshore Safety Act 1992 to preserve the security of petroleum but only in relation to refineries or terminals that receive crude oil from a UK offshore installation.
- The Governments can make emergency regulations under the Civil Contingencies Act 2004 to deal with actual or threatened emergencies.
- Under the Enterprise Act 2002, the Government can intervene in certain mergers on the grounds of national security, financial stability or media plurality.

A key issue of the existing, limited, regulatory framework is that the Government can only take action in emergency situations, resulting in a lack of pro-active powers to take preventative measures.

BEIS therefore proposes to a small number of 'light-touch' measures to enable the Government to identify risk and support the sector in insuring fuel resilience, together with back stop powers to protect fuel supply resilience and sanctions for non-compliance.

### Who would the proposals affect?

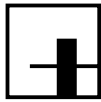
The measures would apply to companies operating in the UK downstream oil sector, being any company involved in any part of the import, supply, storage, distribution and/or retail of petroleum or petroleum products into or within the UK.

### What is proposed?

There are three categories of proposed measures: monitor, protect and insure and it is envisaged that there will be sanctions for non-compliance with the proposed measures, to be pursued only as a last resort.

#### MONITOR

In order to fully understand the impact of events which are potentially disruptive to fuel supply, BEIS intends to obtain regular information from companies operating in the downstream oil sector. Although the Government can require



some information to be submitted to it under existing legislation, it has no power to request regular information for fuel resilience purposes.

BEIS proposes to introduce a regime allowing it to collect information from the downstream oil sector, limited to data which is necessary for the protection of fuel supply resilience, without breaching commercial protections. This would require companies to supply two categories of information; (i) regular technical data reporting, and (ii) reporting incidents or risks of disruption to fuel supplies.

The consultation sets out the types of information which BEIS proposes will be included in the regular technical data reporting, including reporting of the production, supply and disposal of petroleum products in the UK; reporting of the consumption of commercial fuels by industrial sector and the volumes of marine fuels sold in the UK; and reporting by key logistic companies on the supply and demand of petroleum products in the UK. The frequency of which each category of information requires to be reported varies from monthly, to quarterly or annually and the regime is intended only to apply to companies that meet specific thresholds, which thresholds vary depending on the category of information being reported.

In an effort to reduce the administrative burden on companies, BEIS proposes to access data submitted to other Government departments under existing regulatory requirements.

### PROTECT

BEIS proposes two new protection measures:

1. An ownership test enabling the Government to intervene for the protection of fuel supply where operators or owners of infrastructure do not meet satisfactory levels of competence or financial soundness.
2. Government spending power to support resilience improvements and schemes.

#### *Ownership Test*

BEIS' proposals aim to protect against supply disruption caused by financial failure whilst still allowing new companies to enter the UK market and drive innovation. Intervention would only be permitted for the purposes of protecting the UK's fuel supply and would be limited to where there is a real and material risk to fuel supplies.

There will be a minimum threshold, with the ownership test only applying to companies in the downstream oil sector that handle more than 500,000 tonnes of petroleum or petroleum products per year. It is intended that the test will capture transactions resulting in a change of control of the company, with qualifying transactions being the acquisition of 25% or more of the company's shares or voting rights; or any other transaction that gives control, significant influence over, significant access to,

that company or its assets.

Companies will require to notify BEIS of any qualifying transactions and provide relevant information in order to assure the Government of the new owner's financial soundness and operating competence. It is proposed that Government approval would have to be secured prior to the transaction taking legal effect. The Government's action would have to be reasonable and proportional to the risk of fuel supply resilience, but could include blocking the transaction all together or the imposition of conditions on it.

#### *Government Spending*

BEIS has not set out in detail what Government spending it envisages, it merely proposes to have a spending power (but not revenue raising power) to enable it to support and facilitate resilience improvements in the downstream oil sector.

### INSURE

BEIS proposes two new insurance measures:

1. Industry wide measures to be put in place to maintain fuel supply during a disruption; and
2. A resilience direction, to ensure members of the downstream oil sector take appropriate action to maintain and improve fuel supply.

#### *Industry Wide Measures*

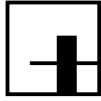
The Government proposes to identify suitable cross-industry resilience measures, which would be implemented and managed by the industry. One such measure being considered by BEIS is a reserve tanker fleet to provide additional capacity to mitigate disruption impacts, owned and operated by the downstream oil industry. It is proposed that secondary legislation would be enacted to govern the collaborative schemes.

#### *Resilience Direction*

It is proposed that BEIS would have the power to give the downstream oil industry directions for the purposes of protecting UK fuel supply, including a direction to require participation in one of the industry wide resilience measures noted above. The direction would state the required outcome, and may also state the means necessary to achieve that outcome. It is intended that such a power would be used sparingly and any use would be reasonable and proportionate to the risk to fuel resilience.

#### *Conclusion*

Further details of the proposals can be found in the consultation paper [here](#). The industry and other interested parties have until 12 December 2017 to respond to the consultation with their views on the proposed measures. It remains to be seen whether the industry will agree that BEIS' intended light touch approach is sufficient, or necessary, to improve fuel supply resilience in the UK.



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