



DOWNSTREAM OIL RESILIENCE DRAFT BILL

Presented to Parliament by the Secretary of State for Business, Energy
and Industrial Strategy by Command of Her Majesty

June 2021

CP 435



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ISBN 978-1-5286-2585-2
CCS0421444980 06/21

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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Ministerial foreword

The Government is committed to ensuring a secure and reliable energy supply. The continuity of fuel supply to consumers is key to ensuring a successful, competitive, and open economy, as well as the functioning of the UK's critical services.

Oil-based fuels are currently the UK's main source of energy for transport (96%) and supplied over 44% of the UK's final energy demand in 2019. The downstream oil sector manages the fuel supply chain, which includes importing, refining, storage, distribution and retail of petrol, diesel, aviation and heating fuels. In the main, the sector is efficient, flexible, and effective in ensuring continuity of fuel supply. However, there are risks to this supply chain and the associated fuel infrastructure, including accidents, severe weather, malicious threats, industrial action and financial failure.

As the UK transitions to a decarbonised economy, the demand for oil-based fuels will decline but remain significant, especially for hard to decarbonise sectors such as aviation, road freight and marine. Our primary objective is ensuring that the United Kingdom has energy supplies that are reliable, affordable, and clean. It is necessary to address the current and future risks to the downstream oil sector in order to align with the conclusions of the *Integrated Review*, published in March.

In the last year, Covid-19 has impacted heavily on the sector, and industry are now looking to how they can recover sustainably. Ensuring a reliable and secure fuel supply to essential services in coming years will be critical.

In 2017 the Government undertook a programme of work, including a formal consultation, to assess the UK's fuel supply resilience. The conclusion was that, while individual suppliers invest in their own resilience, there is limited co-ordination and no mechanism to share burden across the sector or with Government. The Downstream Oil Resilience Bill would provide Government with powers to address these vulnerabilities. The Government can take emergency powers during a crisis – primarily through the Energy Act 1976 and the Civil Contingencies Act 2004. However, our ability to proactively protect fuel supply is limited. The Bill seeks to address this deficiency, recognising that it is better to prevent than react.

The Bill as currently drafted gives Government the following powers:

- Information power: requires industry to provide vital information to ensure we can identify potential disruptions and monitor the impact during a crisis;
- Power of direction: requires industry to take measures to improve their own resilience, such as keep critical infrastructure operating;
- Control test power: ensures companies gaining control of critical DSO infrastructure are financially and operationally fit for the task; and
- Spending power: provides financial assistance to support the sector to improve resilience and ensure continuity of supply.

I am pleased to be able to share a draft of the Downstream Oil Resilience Bill, with the supporting Explanatory Notes. The Department will continue to work closely with stakeholders to refine the Bill, and develop our plans in more detail for implementation, including any necessary secondary legislation and guidance.

The Rt Hon Anne-Marie Trevelyan MP

Minister of State for Business, Energy and Clean Growth

Downstream Oil Resilience Bill

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Make provision for promoting the resilience of the downstream oil sector.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

KEY DEFINITIONS

1 “Downstream oil sector activity” and other key concepts

- (1) In this Act “downstream oil sector activity” means an activity of a kind mentioned in subsection (2), so far as the activity—
 - (a) is carried on in the United Kingdom in the course of a business, and
 - (b) contributes (directly or indirectly) to the supply of crude oil based fuels to consumers in the United Kingdom or persons carrying on business in the United Kingdom.
- (2) The kinds of activity are—
 - (a) storing oil;
 - (b) handling oil;
 - (c) the carriage of oil by sea or inland water;
 - (d) transporting oil by road;
 - (e) conveying oil by pipes;
 - (f) refining or otherwise processing oil.
- (3) In this Act—
 - (a) “downstream facility owner” means the owner of a pipeline, terminal, or other facility or infrastructure which is used, or any part of which is used, for the purposes of downstream oil sector activities;
 - (b) in relation to a downstream facility owner, “the owned facility” means the facility or infrastructure mentioned in paragraph (a).
- (4) In this Act “relevant activities or assets”—

- (a) in relation to a person carrying on downstream oil sector activities, means the person’s downstream oil sector activities (and includes any land or assets under the person’s control that are associated with those activities);
 - (b) in relation to a downstream facility owner, means the owned facility.
- (5) In subsection (2) the references to “oil” do not include crude oil which has not yet entered any refinery or terminal in the United Kingdom.
- (6) In subsection (3) “owner”, in relation to any facility or infrastructure, means—
- (a) a person in whom the facility or infrastructure is vested, or
 - (b) a lessee of the facility or infrastructure.
- (7) In this Act references to a “person carrying on downstream oil sector activities” include any person carrying on such activities (whether or not as the owner of the oil).

2 Resilience and continuity of supply

- (1) In this Act “downstream oil sector resilience” means the capability of persons carrying on downstream oil sector activities and downstream oil facility owners to—
- (a) manage the risk of,
 - (b) reduce the potential adverse impact of, and
 - (c) facilitate recovery from,
- disruptions to downstream oil sector activities.
- (2) For the purposes of this Act there is “continuity of supply of crude oil based fuel” where the supply of crude oil based fuel to consumers in all areas of the United Kingdom, and persons carrying on business in all areas of the United Kingdom—
- (a) is reliable and continuous, and
 - (b) is maintained at normal levels.
- (3) In subsection (2) “normal levels” means levels that—
- (a) are not substantially below those that are normal (taking account of seasonal variations), and
 - (b) are consistent with a reasonable balance between supply and demand.

PART 2

POWERS FOR RESILIENCE ETC PURPOSES

Directions for resilience or continuity purposes

3 Directions for resilience or continuity of supply purposes

- (1) The Secretary of State may for the purpose of maintaining or improving downstream oil sector resilience direct a person to whom this section applies to do anything in relation to the person’s relevant activities or assets.
- (2) Subsection (3) applies at any time when there is disruption to, or a failure of, continuity of supply of crude oil based fuel.

- (3) The Secretary of State may direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—
 - (a) restoring continuity of supply of crude oil based fuel, or
 - (b) counteracting the disruption or failure, or its potential adverse impact.
- (4) Subsection (5) applies if the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of crude oil based fuel.
- (5) The Secretary of State may direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—
 - (a) reducing the risk, or
 - (b) reducing the potential adverse impact of the disruption or failure.
- (6) This section applies to the following persons—
 - (a) a person carrying on downstream oil sector activities in the course of a business which has capacity in excess of 500,000 tonnes;
 - (b) a downstream facility owner if the owned facility has capacity in excess of 20,000 tonnes.
- (7) For the purposes of this Act—
 - (a) a business “has capacity in excess of” a specified number of tonnes at any time in a calendar year if in the previous calendar year downstream oil sector activities were carried on in that business in relation to more than that number of tonnes of oil;
 - (b) a facility or infrastructure “has capacity in excess of” a specified number of tonnes at any time in a calendar year if it was used in the previous calendar year for the purposes of downstream oil sector activities in relation to more than that number of tonnes of oil.

4 Section 3: supplementary

- (1) A direction under section 3 may be—
 - (a) a general direction, or
 - (b) a specific direction (for example, a direction under section 3(1) to acquire and install specific equipment, or carry out specific works, at the person's own expense).
- (2) A direction under section 3 may, for example—
 - (a) impose a requirement that must be complied with at specified intervals or within a time limit;
 - (b) impose requirements for a limited period or indefinitely.
- (3) In section 3 references to a direction to “do” anything include—
 - (a) a direction to refrain from doing anything;
 - (b) a direction to achieve an outcome.
- (4) A direction under section 3—
 - (a) may make different provision for different purposes;
 - (b) may be modified or revoked by a later direction under that section.

5 Procedure for giving directions

- (1) Before giving a person a direction under section 3 the Secretary of State must give the person a notice accompanied by a draft of the proposed direction.
- (2) The notice under subsection (1) must—
 - (a) state that the Secretary of State proposes to give the person a direction in the form of the accompanying draft;
 - (b) explain why the Secretary of State proposes to give the direction;
 - (c) state when it is intended that the direction will come into effect;
 - (d) specify a period within which the person may make written representations with respect to the proposal.
- (3) The period specified under subsection (2)(d) must begin with the date on which the notice is given to the person and must be not less than 14 days.
- (4) Before giving a direction under section 3, the Secretary of State must consult—
 - (a) so far as the direction relates to downstream oil sector activities carried on in England, or a facility or infrastructure located in England—
 - (i) the Health and Safety Executive (including in its COMAH capacity), and
 - (ii) the Environment Agency in its COMAH capacity,
 - (b) so far as the direction relates to downstream oil sector activities carried on in Scotland, or a facility or infrastructure located in Scotland—
 - (i) the Health and Safety Executive (including in its COMAH capacity), and
 - (ii) the Scottish Environment Protection Agency in its COMAH capacity,
 - (c) so far as the direction relates to downstream oil sector activities carried on in Wales, or a facility or infrastructure located in Wales—
 - (i) the Health and Safety Executive (including in its COMAH capacity), and
 - (ii) the Natural Resources Body for Wales in its COMAH capacity,
 - (d) so far as the direction relates to downstream oil sector activities carried on in Northern Ireland, or a facility or infrastructure located in Northern Ireland —
 - (i) the Health and Safety Executive for Northern Ireland (including in its COMAH(NI) capacity), and
 - (ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland in its COMAH(NI) capacity, and
 - (e) any other persons the Secretary of State thinks appropriate.
- (5) The Secretary of State must decide whether to give the person the proposed direction (with or without modifications), after considering any representations made by—
 - (a) the person mentioned in subsection (1), and
 - (b) any person consulted in accordance with subsection (4).
- (6) The Secretary of State must give written notice of that decision to the person mentioned in subsection (1).
- (7) If the decision is to give the proposed direction, the notice must—
 - (a) contain the direction, and
 - (b) state the time when the direction is to take effect.

- (8) In relation to a person mentioned in subsection (4)—
- (a) “in its COMAH capacity” means in the person’s capacity as one of the persons who (acting jointly) constitute the competent authority as defined in regulation 4(b) of the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483);
 - (b) “in its COMAH(NI) capacity” means in the person’s capacity as one of the persons who (acting jointly) constitute the competent authority as defined in regulation 4 of the Control of Major Accident Hazards Regulations 2015 (S.R. (N.I.) 2009 No. 325).

6 Appeal against directions

- (1) A person to whom a direction under section 3 is given may appeal to the First-tier Tribunal against the direction on the ground that the decision to give the direction—
- (a) is based on an error of fact,
 - (b) is wrong in law, or
 - (c) is unfair or unreasonable.
- (2) On an appeal under this section the Tribunal may—
- (a) confirm or cancel the direction, or
 - (b) refer the matter back to the Secretary of State for reconsideration with such directions (if any) as the Tribunal considers appropriate.

7 Offence of failure to comply with a direction

- (1) Any person who, without reasonable excuse, fails to comply with a direction given to the person under section 3 commits an offence.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.

Corresponding powers to make regulations

8 Corresponding powers to make regulations

- (1) The Secretary of State may, for the purpose of maintaining or improving downstream oil sector resilience, by regulations require a person to whom this section applies to do anything in relation to the person’s relevant activities or

- assets that a person to whom section 3 applies could be required to do (in relation to that person's relevant activities or assets) by a direction under section 3(1).
- (2) The Secretary of State may by regulations require a person to whom this section applies to do anything in relation to the person's relevant activities or assets that a person to whom section 3 applies could be required to do (in relation to that person's relevant activities or assets) by a direction under section 3(3).
 - (3) The power of the Secretary of State to make regulations under subsection (2) is exercisable only when there is disruption to, or a failure of, continuity of supply of crude oil based fuel.
 - (4) The Secretary of State may by regulations require a person to whom this section applies to do anything in relation to the person's relevant activities or assets that a person to whom section 3 applies could be required to do (in relation to that person's relevant activities or assets) by a direction under section 3(5).
 - (5) The power of the Secretary of State to make regulations under subsection (4) is exercisable only if the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of crude oil based fuel.
 - (6) This section applies to the following persons—
 - (a) a person carrying on downstream oil sector activities in the course of a business which has capacity in excess of 1,000 tonnes;
 - (b) a downstream facility owner if the owned facility has capacity in excess of 1,000 tonnes.
 - (7) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.
 - (8) In this section references to a requirement to “do” anything include—
 - (a) a requirement to refrain from doing anything;
 - (b) a requirement to achieve an outcome.
 - (9) Before making regulations under this section the Secretary of State must consult—
 - (a) so far as the regulations relate to matters in England—
 - (i) the Health and Safety Executive, (including in its COMAH capacity), and
 - (ii) the Environment Agency in its COMAH capacity,
 - (b) so far as the regulations relate to matters in Scotland—
 - (i) the Health and Safety Executive (including in its COMAH capacity), and
 - (ii) the Scottish Environment Protection Agency in its COMAH capacity,
 - (c) so far as the regulations relate to matters in Wales—
 - (i) the Health and Safety Executive (including in its COMAH capacity), and
 - (ii) the Natural Resources Body for Wales in its COMAH capacity,
 - (d) so far as the regulations relate to matters in Northern Ireland—
 - (i) the Health and Safety Executive for Northern Ireland (including in its COMAH(NI) capacity), and

- (ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland in its COMAH(NI) capacity, and
 - (e) any other persons the Secretary of State thinks appropriate.
- (10) In relation to a person mentioned in subsection (9)—
- (a) “in its COMAH capacity” means in the person’s capacity as one of the persons who (acting jointly) constitute the competent authority as defined in regulation 4(b) of the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483);
 - (b) “in its COMAH(NI) capacity” means in the person’s capacity as one of the persons who (acting jointly) constitute the competent authority as defined in regulation 4 of the Control of Major Accident Hazards Regulations 2015 (S.R. (N.I.) 2009 No. 325).

Information

9 Power to require information

- (1) The Secretary of State may by notice in writing require a person to whom this section applies to provide the Secretary of State with information relating to the person’s relevant activities or assets.
- (2) The Secretary of State may only require information under subsection (1) for the purpose of maintaining or improving downstream oil sector resilience.
- (3) This section applies to—
 - (a) a person carrying on downstream oil sector activities in the course of a business which has capacity in excess of 1,000 tonnes;
 - (b) a downstream facility owner if the owned facility has capacity in excess of 1,000 tonnes.
- (4) A notice under subsection (1) may—
 - (a) specify the manner in which information is to be provided;
 - (b) specify time limits for providing information;
 - (c) require information to be provided at specified intervals.

10 Duty to report incidents

- (1) If at any time a person—
 - (a) knows, or has reason to suspect, that a notifiable incident is occurring or has occurred, and
 - (b) meets the condition in paragraph (a), (b) or (c) of subsection (2),
 that person must notify the Secretary of State of the incident as soon as possible.
- (2) The conditions mentioned in subsection (1)(b) are that—
 - (a) the person is carrying on downstream oil sector activities in the course of a business which has capacity in excess of 500,000 tonnes;
 - (b) the person is a downstream facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes;
 - (c) the person is of a class or description specified in regulations made by the Secretary of State under this subsection.
- (3) In this section “notifiable incident”, in relation to a person, means an incident which affects the person’s relevant activities or assets in such a way as to create

- a significant risk of, or cause—
- (a) disruption to, or a failure of, the continuity of supply of crude oil based fuel, or
 - (b) an adverse effect on downstream oil sector resilience.
- (4) The Secretary of State may by notice in writing require a person who has given a notice under subsection (1) to provide further information about the incident.
- (5) A notice under subsection (4) may specify—
- (a) the manner in which information is to be provided, and
 - (b) time limits for providing information.
- (6) Where a notification under subsection (1) is not made in writing, it must be confirmed in writing as soon as possible.
- (7) Regulations under subsection (2)(c) which specify a class or description of person may specify the meaning that “relevant activities or assets” is to have in subsection (3) in relation to persons of that class or description.

11 Contravention of requirement under section 9 or 10

- (1) A person who, without reasonable excuse, fails to comply with a requirement imposed by a notice under section 9(1) or 10(4) commits an offence.
- (2) A person who, without reasonable excuse, fails to comply with section 10(1) commits an offence.
- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (4) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (3)(a) to 12 months is to be read as a reference to 6 months.

12 Provision of information at specified intervals

- (1) The Secretary of State may by regulations require a person to whom this section applies to provide to the Secretary of State, at intervals specified in the regulations, information relating to the person’s relevant activities or assets.
- (2) The power to make regulations under this section may only be exercised for the purpose of maintaining or improving downstream oil sector resilience.
- (3) This section applies to—
- (a) a person carrying on downstream oil sector activities in the course of a business which has capacity in excess of 1,000 tonnes;
 - (b) a downstream facility owner if the owned facility has capacity in excess

of 1,000 tonnes.

- (4) The regulations may make provision about—
 - (a) the information to be provided;
 - (b) the manner in which information is to be provided;
 - (c) time limits for providing information.
- (5) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.

13 Disclosure of information held by the Secretary of State

- (1) This section applies to information held by the Secretary of State which was provided to the Secretary of State under section 9, 10 or 12.
- (2) The information may be disclosed—
 - (a) to any government department or devolved authority for the purpose of—
 - (i) maintaining or improving downstream oil sector resilience, or
 - (ii) restoring, or counteracting a disruption to or failure of, continuity of supply of crude oil based fuel (or counteracting the potential adverse impact of any such disruption or failure), or
 - (b) if the disclosure is necessary for the purpose of criminal proceedings.
- (3) Nothing in this section authorises the making of a disclosure which—
 - (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
 - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.

In determining whether a disclosure would do either of those things, the powers conferred by this section are to be taken into account.

- (4) In subsection (2) “devolved authority” means—
 - (a) the Welsh Ministers,
 - (b) the Scottish Ministers, or
 - (c) a Northern Ireland department.

14 Disclosure of information by HMRC

- (1) Her Majesty’s Revenue and Customs (or anyone acting on their behalf) may disclose information to the Secretary of State for the purpose of facilitating the exercise by the Secretary of State of functions relating to downstream oil sector resilience.
- (2) A person who receives information as a result of this section may not—
 - (a) use the information for a purpose other than that mentioned in subsection (1), or
 - (b) further disclose the information,except with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (3) If a person discloses information in contravention of subsection (2)(b) which relates to a person whose identity—

- (a) is specified in the disclosure, or
 - (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act.
- (4) This section does not limit the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
 - (5) Nothing in this section authorises the making of a disclosure which—
 - (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
 - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.
- In determining whether a disclosure would do either of those things, the powers conferred by this section are to be taken into account.

PART 3

RESTRICTION ON ACQUISITIONS

Restriction on acquisitions

15 Restriction on making qualifying acquisitions

- (1) No person may make a qualifying acquisition (see section 16) without the written consent of the Secretary of State.
- (2) An application for consent under this section must specify—
 - (a) the asset mentioned in section 16(2)(a) or (4)(b) or the company mentioned in section 16(6)(b) (as the case may be),
 - (b) the holding or interest that the person proposes to acquire, and
 - (c) the proposed date of the acquisition.
- (3) The date specified under subsection (2)(c) must fall after the end of the 13 weeks beginning with the date on which the application is made.
- (4) The Secretary of State must acknowledge receipt of an application under this section in writing before the end of the fifth working day following the day of receipt.
- (5) The Secretary of State may by regulations make provision about applications under this section, including provision about—
 - (a) the form of an application;
 - (b) information to be included in an application;
 - (c) what documents or other materials must accompany an application;
 - (d) fees for applications;
 - (e) time limits for doing anything required to be done in connection with an application and the procedure for extending the time allowed.

16 “Qualifying acquisition”

- (1) A person makes a “qualifying acquisition” in the first, second and third cases

set out below.

- (2) The first case is where—
 - (a) the person acquires an interest in a qualifying asset (see section 17), and
 - (b) the condition in subsection (3) is met immediately after the acquisition but not immediately before the acquisition.
- (3) The condition is that the value of the interest (or the aggregate value of the interests) that the person holds directly or indirectly in the qualifying asset is more than 25% of the value of the asset.
- (4) The second case is where—
 - (a) the person acquires shares or rights, and
 - (b) the condition in subsection (5) is met, in relation to a qualifying asset, immediately after the acquisition but not immediately before the acquisition.
- (5) The condition is that the value of any interest (or the aggregate value of any interests) that the person holds directly or indirectly in the qualifying asset is more than 25% of the value of that asset.
- (6) The third case is where—
 - (a) the person acquires shares or rights, and
 - (b) the condition in subsection (7) is met, in relation to a critical asset-owning company, immediately after the acquisition but not immediately before the acquisition.
- (7) The condition is that the person holds, directly or indirectly—
 - (a) more than 25% of the shares, or
 - (b) more than 25% of the voting rights,in the critical asset-owning company.
- (8) For the purposes of this section a company is a “critical asset-owning company” if the value of any interest (or the aggregate value of any interests) that it holds directly or indirectly in a qualifying asset is more than 25% of the value of the asset.
- (9) In this section “interest” means any interest (whether legal or beneficial).

17 “Qualifying asset”

- (1) In relation to an acquisition mentioned in section 16(2), (4) or (6), “qualifying asset” means an asset which—
 - (a) is located in the United Kingdom, and
 - (b) is used in the calendar year preceding the date of the acquisition in relevant operations carried out in relation to more than 500,000 tonnes of oil in the course of a business.
- (2) For the purposes of this section “relevant operations” are any of the following—
 - (a) storing oil;
 - (b) handling oil;
 - (c) transporting oil by road;
 - (d) conveying oil by pipes;
 - (e) refining or otherwise processing oil.
- (3) But operations carried out in relation to crude oil which has not yet entered any

refinery or terminal in the United Kingdom are not “relevant operations” for the purposes of this section.

- (4) In this Act “the relevant business”, in relation to a qualifying acquisition or proposed qualifying acquisition (whether within the first, second or third case in section 16), means the business mentioned in subsection (1)(b).

18 “Indirect” holdings and other supplementary matters

Schedule 1 contains provisions for the purposes of this Part about—

- (a) the holding of shares, rights or interests “indirectly”,
- (b) calculating shareholdings,
- (c) voting rights, and
- (d) other supplementary matters.

Procedure following application for consent

19 The decision period

- (1) The period within which the Secretary of State must decide an application made under section 15 (“the decision period”) is 13 weeks beginning with the day on which the Secretary of State acknowledges receipt of the application (subject to any extension under subsection (2), (3) or (5)).
- (2) If the Secretary of State considers that there are special reasons why the decision cannot be made within the period specified in subsection (1), the Secretary of State may extend the decision period by up to 4 weeks.
- (3) If the decision period is extended under subsection (2) —
 - (a) no further extension may be made under that subsection, but
 - (b) the Secretary of State may extend the decision period by up to a further 4 weeks under this subsection if the Secretary of State considers that there are exceptional circumstances as a result of which the decision cannot be made without that further extension.
- (4) Nothing prevents—
 - (a) the repeated application of subsection (3) in relation to a decision period;
 - (b) the extension under this section of a decision period which has been interrupted under section 20(2), or the interruption under section 20(2) of a decision period which has been extended under this section.
- (5) The Secretary of State may extend the decision period if the Secretary of State considers that—
 - (a) the information required by the Secretary of State for making the decision is incomplete as a result of a failure by the applicant to provide information requested under section 20, or
 - (b) a relevant person has failed (whether with or without a reasonable excuse) to comply with any requirement of a notice under section 21 (power to obtain information from third parties).
- (6) In subsection (5) “relevant person” means—
 - (a) any person carrying on the business mentioned in section 17(1)(b);
 - (b) the company mentioned in section 16(6)(b);
 - (c) any person who (whether alone or as a member of a group) owns or has

- control of a person mentioned in paragraph (a) or (b);
- (d) any officer, employee or agent of any person mentioned in paragraph (a), (b) or (c).
- (7) For the purposes of subsection (6) a person or group of persons able, directly or indirectly, to control or materially to influence the policy of a body of persons corporate or unincorporate, but without having a controlling interest in that body of persons, is to be regarded as having control of it.
- (8) The Secretary of State must inform the applicant in writing of—
 - (a) the duration of the decision period and its expiry date;
 - (b) any change to the expiry date by virtue of subsection (2) or (3) or section 20.
- (9) Unless the Secretary of State decides the application within the time allowed by or in accordance with this Part the Secretary of State is treated as having consented to the acquisition.

20 Applications: further information

- (1) The Secretary of State may, at any time before the expiry of the decision period, in writing ask the applicant—
 - (a) to provide the Secretary of State with further information which is reasonably required for the purpose of deciding the application, and
 - (b) to provide the information at a time and in a form and manner specified in the request.
- (2) On the first occasion that the Secretary of State asks for further information, the decision period is interrupted from the date of the request until the earlier of—
 - (a) the date the Secretary of State receives the requested information, or
 - (b) the end of the 20th working day following the date of the request.
- (3) The Secretary of State may make further requests for information (but a further request does not result in a further interruption of the decision period).
- (4) The Secretary of State must acknowledge in writing receipt of further information before the end of the fifth working day following the day of receipt.

21 Power to obtain information from third parties

- (1) Where an application has been made under section 15 the Secretary of State may by notice in writing require a person other than the applicant—
 - (a) to provide the Secretary of State with any relevant information specified or described in the notice, and
 - (b) to provide it at a time and in a form and manner specified in the notice.
- (2) In subsection (1) “relevant information” means information which is reasonably required by the Secretary of State for the purpose of deciding the application.
- (3) A notice under this section must—
 - (a) state the purpose for which the information is required, and
 - (b) include information about the possible consequences of not complying with it.
- (4) A person is not to be required under this section to provide any information which they could not be compelled to provide in evidence in civil proceedings

- before the court.
- (5) A person who, without reasonable excuse, fails to comply with a notice under this section commits an offence.
 - (6) A person who commits an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale (or both).
 - (7) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (6)(a) to 51 weeks is to be read as a reference to 6 months.
 - (8) In this section “the court” means—
 - (a) in relation to England and Wales or Northern Ireland, the High Court; and
 - (b) in relation to Scotland, the Court of Session.

Decision of application

22 Decision of an application

- (1) Where an application is made under section 15 the Secretary of State must—
 - (a) consent to the acquisition unconditionally,
 - (b) consent to the acquisition on condition that specified conditions are met in respect of the acquisition or before the acquisition takes place, or
 - (c) refuse consent.
- (2) In deciding which action to take under subsection (1) the Secretary of State must consider—
 - (a) any risks that the acquisition poses to the financial stability of the relevant business (see section 17(4));
 - (b) any risk that the acquisition will adversely affect the availability and effective use of technical resources that are required for the sound management of the relevant business.
- (3) In deciding which action to take under subsection (1) the Secretary of State must also have regard to—
 - (a) the desirability of securing continuity of supply of crude oil based fuel;
 - (b) the likely influence that the applicant will have on the relevant business.
- (4) The Secretary of State may only impose conditions under subsection (1)(b) where the Secretary of State would refuse the application if the conditions were not imposed.
- (5) The Secretary of State may only refuse an application—
 - (a) if there are reasonable grounds for doing so on the basis of the matters set out in subsection (2), or

- (b) if information required of the applicant by or under section 15 or 20 has not been provided or is incomplete.
- (6) The Secretary of State must notify the applicant of the decision under subsection (1) before the expiry of the decision period.
- (7) For the purposes of this section, the “financial stability” of the relevant business is to be determined by reference to the level of risk that the operations mentioned in section 17(2) (“the relevant operations”) might diminish or cease because of a lack of funds or a person’s insolvency.
- (8) In subsection (2)(b)—
 - (a) the reference to “technical resources” includes personnel;
 - (b) the reference to the “sound management of the relevant business” includes the safe and competent management of the relevant operations.

23 Statement about decisions under section 22

- (1) The Secretary of State must issue a statement about how it is proposed the Secretary of State’s functions under section 22 will be exercised.
- (2) The statement must, in particular, specify factors to be taken into account in assessing risks for the purposes of section 22(2).
- (3) The Secretary of State may revise the statement whenever the Secretary of State thinks appropriate (including by replacing the whole or part of the statement with new content, or making any other substantive change).
- (4) The Secretary of State must publish, in whatever manner the Secretary of State thinks appropriate, the up to date version of the statement.
- (5) This section is subject to section 24 (consultation and Parliamentary procedure).

24 Consultation and Parliamentary procedure

- (1) The Secretary of State may not issue a statement under section 23(1) unless the conditions in subsections (2) and (3) below have been met.
- (2) The first condition is that the Secretary of State—
 - (a) carries out such consultation as the Secretary of State thinks appropriate in relation to a draft of the statement, and
 - (b) makes any changes to the draft that appear to the Secretary of State to be necessary in view of the responses to the consultation.
- (3) The second condition is that after subsection (2) has been complied with—
 - (a) the Secretary of State lays the draft before Parliament, and
 - (b) the draft is approved by a resolution of each House of Parliament.
- (4) Consultation undertaken before the commencement of subsection (2) is as effective for the purposes of that subsection as consultation undertaken after that commencement.
- (5) This section has effect in relation to the issuing of any revised statement unless the Secretary of State considers that the proposed revisions to the statement are insubstantial.

Appeal against decision

25 Appeal where application refused etc

- (1) Where the Secretary of State makes a decision under section 22(1)(b) or (c), the applicant may appeal to the First-tier Tribunal against the decision on the ground that it—
 - (a) is based on an error of fact,
 - (b) is wrong in law, or
 - (c) is unfair or unreasonable.
- (2) On an appeal under this section the Tribunal may—
 - (a) confirm or cancel the decision, or
 - (b) refer the matter back to the Secretary of State for reconsideration with such directions (if any) as the Tribunal considers appropriate.

PART 4

ENFORCEMENT

Enforcement provisions relating only to Part 3

26 Warning notices

- (1) Subsection (2) applies where the Secretary of State—
 - (a) reasonably believes that a person meets the condition in subsection (5), (6) or (7), and
 - (b) is considering giving the person a restriction notice (see section 27).
- (2) The Secretary of State may give the person written notice (a “warning notice”) that the Secretary of State is considering taking that action.
- (3) A warning notice—
 - (a) may require the person’s compliance with specified conditions, and
 - (b) (if it does so) must explain the effect of section 27(5).
- (4) Conditions under subsection (3) may only be specified for the purpose of—
 - (a) securing or improving the financial stability of the relevant business (see section 17(4));
 - (b) facilitating the availability and effective use of technical resources that are required for the sound management of the relevant business.
- (5) The first condition is that—
 - (a) the person has, without the consent of the Secretary of State, made a qualifying acquisition within the first case in section 16(1),
 - (b) the person continues to hold the interest mentioned in section 16(2)(a), and
 - (c) the condition in subsection (3) of that section continues to be met in relation to the qualifying asset.
- (6) The second condition is that—
 - (a) the person has, without the consent of the Secretary of State, made a qualifying acquisition within the second case in section 16(1),

- (b) the person continues to hold the shares or rights mentioned in section 16(4)(a), and
 - (c) the condition in subsection (5) of that section continues to be met in relation to the qualifying asset.
- (7) The third condition is that—
 - (a) the person has, without the consent of the Secretary of State, made a qualifying acquisition within the third case in section 16(1),
 - (b) the person continues to hold the shares or rights mentioned in section 16(6)(a), and
 - (c) the condition in subsection (7) of that section continues to be met in relation to the critical asset-owning company.
- (8) In this section expressions which are defined in section 22 are to be interpreted in accordance with that section.

27 Restriction notices

- (1) The Secretary of State may give a notice in writing (a “restriction notice”) to a person if—
 - (a) the person meets the first, second or third condition in section 26, and
 - (b) the Secretary of State has given the person a warning notice.
- (2) In a restriction notice given on the basis that the person meets the first condition in section 26, the Secretary of State may direct that the interest in question is, until further notice, subject to the restriction that, except by court order, any agreement to transfer, or transfer of, the interest is to be void.
- (3) In a restriction notice given on the basis that the person meets the second or third condition in section 26, the Secretary of State may direct that the shares or rights in question are, until further notice, subject to one or more of the following restrictions—
 - (a) except by court order, the following are to be void—
 - (i) any agreement to transfer, or transfer of, any such shares or rights;
 - (ii) in the case of unissued shares, any agreement to transfer, or transfer of, the right to be issued with them;
 - (b) no voting rights are to be exercisable;
 - (c) no further shares are to be issued in pursuance of any right of the holder of any such shares or rights or in pursuance of any offer made to their holder;
 - (d) except in a liquidation, no payment is to be made of any sums due from the body corporate in question on any such shares, whether in respect of capital or otherwise.
- (4) A restriction takes effect—
 - (a) immediately, or
 - (b) on such date as may be specified in the notice.
- (5) In deciding what action, if any, to take in the person’s case under this section the Secretary of State must take into account the person’s compliance, or failure to comply, with any condition imposed under section 26(3).

28 Appeal against warning notice or restriction notice

- (1) A person to whom the Secretary of State gives a warning notice which requires compliance with specified conditions may appeal to the First-tier Tribunal against the decision to impose any one or more of the conditions.
- (2) A person to whom the Secretary of State gives a restriction notice may appeal to the First-tier Tribunal against the decision to give the notice.
- (3) An appeal under subsection (1) or (2) against a decision may be made on the ground that the decision—
 - (a) is based on an error of fact,
 - (b) is wrong in law, or
 - (c) is unfair or unreasonable.
- (4) On an appeal under subsection (1) or (2) the Tribunal may—
 - (a) confirm or cancel the decision in question, or
 - (b) refer the matter back to the Secretary of State for reconsideration with such directions (if any) as the Tribunal considers appropriate.

29 Contravention of restrictions etc

- (1) A person who contravenes section 15(1) (restriction on making qualifying acquisitions) commits an offence.
- (2) A person who contravenes a requirement imposed under section 26(3) (compliance with conditions specified in warning notice) commits an offence.
- (3) A person who contravenes a direction contained in a restriction notice under section 27 commits an offence.
- (4) A person who commits an offence under this section is liable—
 - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (5) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (4)(a) to 12 months is to be read as a reference to 6 months.

Offences: general

30 Making of false statements etc

- (1) It is an offence for a person to make a statement which the person knows is false or materially misleading—
 - (a) in responding to a requirement imposed by the Secretary of State—
 - (i) under section 9 (power to require information),

- (ii) under subsection (4) of section 10 (duty to report incidents), or
 - (iii) under regulations under section 12 (information: general requirements),
 - (b) in an application under section 15 (application for consent to qualifying acquisition),
 - (c) in response to a request under section 20 (further information from applicant),
 - (d) in response to a notice under section 21 (power to obtain information from third parties), or
 - (e) in making any other statement to the Secretary of State in connection with any of the Secretary of State's functions under this Act.
- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (3) In relation to an offence committed before paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the reference in subsection (2)(a) to 12 months is to be read as a reference to 6 months.

31 Offences under regulations

- (1) This section applies to regulations under—
 - (a) section 8 (corresponding powers to make regulations);
 - (b) section 12 (information: general requirements).
- (2) Regulations to which this section applies may provide for an offence under the regulations to be triable—
 - (a) only summarily, or
 - (b) either summarily or on indictment.
- (3) Regulations to which this section applies may provide for an offence under the regulations that is triable either way to be punishable—
 - (a) on summary conviction in England and Wales with imprisonment for a term not exceeding the period specified or a fine (or both);
 - (b) on summary conviction in Scotland or Northern Ireland with imprisonment for a term not exceeding the period specified or a fine not exceeding the statutory maximum (or both);
 - (c) on conviction on indictment, with imprisonment for a term not exceeding the period specified, which may not exceed two years, or a fine (or both).
- (4) A period specified under subsection (3)(a) may not exceed—
 - (a) 6 months, in relation to offences committed before the date on which paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into

- force,
- (b) 12 months in relation to offences committed on or after that date.
- (5) A period specified under subsection (3)(b) may not exceed—
- (a) in relation to Scotland, 12 months,
 - (b) in relation to Northern Ireland, 6 months.
- (6) Regulations to which this section applies may provide for a summary offence under the regulations to be punishable—
- (a) with imprisonment for a term not exceeding the period specified,
 - (b) with—
 - (i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
 - (ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or
 - (c) with both.
- (7) A period specified under subsection (6)(a) may not exceed—
- (a) in relation to England and Wales—
 - (i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 comes into force, or
 - (ii) 51 weeks, in relation to offences committed on or after that date,
 - (b) in relation to Scotland, 12 months,
 - (c) in relation to Northern Ireland, 6 months.
- (8) In this section “specified” means specified in the regulations.

32 Proceedings for offences

Proceedings for an offence under this Act (including an offence created by regulations under section 8 or 12)—

- (a) may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) may not be brought in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

33 Liability of officers of entities

- (1) Where an offence under this Act committed by a body corporate is proved—
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to neglect on the part of an officer of the body corporate,
- that officer (as well as the body corporate) commits the offence and is liable to be proceeded against and dealt with accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means—
- (a) any director, manager, secretary or other similar officer of the body corporate, or

- (b) any person purporting to act in any such capacity.
- (3) In subsection (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) Where an offence under this Act is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, that partner (as well as the partnership) commits the offence and is liable to be proceeded against and dealt with accordingly.

Civil sanctions

34 Discretionary requirements

- (1) The Secretary of State—
 - (a) may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person has committed an offence falling within subsection (3);
 - (b) may not impose a discretionary requirement on a person if the person has raised a defence and the Secretary of State is satisfied that, by reason of the defence, the person would not be liable to be convicted of the offence.
- (2) In this Act “discretionary requirement” means—
 - (a) a requirement to pay to the Secretary of State a monetary penalty of an amount determined by the Secretary of State (a “variable monetary penalty”),
 - (b) a requirement to take specified steps, within any specified period, to secure that the offence does not continue or recur (a “compliance requirement”), or
 - (c) a requirement to take specified steps, within any specified period, to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed (a “restoration requirement”).
- (3) The following offences fall within this subsection—
 - (a) an offence under—
 - (i) section 7 (failure to comply with a direction),
 - (ii) section 11 (contravention of requirement under section 9 or 10),
 - (iii) subsection (1), (2) or (3) of section 29 (restriction on acquisitions: contravention of restrictions etc), or
 - (iv) section 30 (making of false statements etc);
 - (b) an offence, other than an offence triable only summarily, that is created by regulations under—
 - (i) section 8 (corresponding powers to make regulations), or
 - (ii) section 12 (information: general requirements).
- (4) The amount of a variable monetary penalty must not exceed £10,000,000.
- (5) The Secretary of State must not impose a discretionary requirement on a person on more than one occasion in relation to the same act or omission.
- (6) In this section “specified” means specified by the Secretary of State.

35 Restriction on criminal liability where discretionary requirement imposed

- (1) A person on whom a discretionary requirement is imposed by reference to an offence falling within section 34(3) may not at any time be convicted of that offence in respect of the relevant act or omission.
- (2) Subsection (1) does not apply if—
 - (a) the discretionary requirement is a compliance requirement or a restoration requirement,
 - (b) the person fails to comply with that requirement, and
 - (c) no variable monetary penalty was imposed on the person in respect of the relevant act or omission.
- (3) In this section the “relevant act or omission” means an act or omission of the person in question on which the Secretary of State’s decision under section 34(1)(a) was founded.

36 Enforcement undertakings

- (1) Subsection (2) applies if—
 - (a) the Secretary of State has reasonable grounds to suspect that a person has committed an offence falling within section 34(3),
 - (b) the person offers to the Secretary of State an enforcement undertaking in respect of the relevant act or omission, and
 - (c) the Secretary of State accepts that undertaking.
- (2) Unless the person has failed to comply with the undertaking (or any part of it)—
 - (a) the person may not at any time be convicted of that offence in respect of the relevant act or omission, and
 - (b) the Secretary of State may not impose on the person, in respect of the relevant act or omission, any discretionary requirement which the Secretary of State would otherwise have power to impose under section 34.
- (3) In this Act “enforcement undertaking” means an undertaking to take, within any period specified in the undertaking, action—
 - (a) for any of the purposes in subsection (4), or
 - (b) of a description specified in regulations made by the Secretary of State.
- (4) The purposes mentioned in subsection (3) are—
 - (a) to secure that the offence does not continue or recur,
 - (b) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or
 - (c) to benefit any person affected by the offence.
- (5) The reference in subsection (4)(c) to action to “benefit any person affected by the offence” includes action by way of the payment of a sum of money.
- (6) Where a person from whom the Secretary of State has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied with part of it, the partial compliance must be taken into account—
 - (a) by the Secretary of State in deciding whether to impose a discretionary requirement on the person in respect of the offence to which the undertaking relates;

- (b) in any decision whether to institute any criminal proceedings in respect of the offence in question.
- (7) In this section “relevant act or omission” means an act or omission of the person to which the grounds mentioned in subsection (1)(a) relate.

37 Further provision about discretionary requirements and enforcement undertakings

In Schedule 2—

- (a) Part 1 contains further provision about discretionary requirements, including provision about—
 - (i) procedure;
 - (ii) penalties for failure to comply with compliance requirements or restoration requirements;
 - (iii) appeals;
- (b) Part 2 contains further provision about enforcement undertakings, including provision about—
 - (i) procedure;
 - (ii) compliance certificates;
 - (iii) appeals.

Guidance: criminal and civil sanctions

38 Guidance as to enforcement of offences

- (1) The Secretary of State must publish guidance as to—
 - (a) the sanctions (including criminal sanctions) to which a person who commits an offence under this Act may be liable,
 - (b) the action which the Secretary of State may take to enforce offences under this Act, whether by virtue of sections 34 to 37 and Schedule 2 or otherwise, and
 - (c) the circumstances in which the Secretary of State is likely to take any such action.
- (2) The Secretary of State may from time to time revise guidance published under this section and publish the revised guidance.
- (3) The Secretary of State must consult such persons as the Secretary of State considers appropriate before publishing any guidance or revised guidance under this section.

39 Guidance as to use of civil sanctions

- (1) The Secretary of State must publish guidance about how the Secretary of State intends to exercise the Secretary of State’s functions under sections 34 to 37 and Schedule 2.
- (2) In the case of each type of discretionary requirement, the guidance must include information as to—
 - (a) the circumstances in which the requirement is likely to be imposed,
 - (b) the circumstances in which it may not be imposed,

- (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the Secretary of State in determining the amount of the penalty (including any discounts for voluntary reporting of non-compliance), and
 - (d) rights to make representations and objections and rights of appeal.
- (3) The Secretary of State—
- (a) must revise the guidance where appropriate;
 - (b) must consult such persons as the Secretary of State thinks appropriate before publishing any guidance or revised guidance.
- (4) The Secretary of State must have regard to the guidance in exercising the Secretary of State’s functions under sections 34 to 37 and Schedule 2.

PART 5

GENERAL

Financial assistance

40 Financial assistance for resilience and continuity purposes

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State in giving, or in connection with giving, financial assistance to an appropriate person for the purpose of—
- (a) maintaining or improving downstream oil sector resilience, or
 - (b) securing or maintaining continuity of supply of crude oil based fuel.
- (2) In this section “appropriate person” means—
- (a) a person carrying on downstream oil sector activities;
 - (b) a downstream facility owner.
- (3) Financial assistance under this section may be given in any form.
- (4) Financial assistance under this section may, in particular, be given by way of—
- (a) grants,
 - (b) loans,
 - (c) guarantee or indemnity,
 - (d) investment by acquisition (directly or through another body corporate) of shares in or securities of a body corporate,
 - (e) investment by the acquisition of any undertaking or assets, or
 - (f) incurring expenditure for the benefit of the person assisted.
- (5) Financial assistance under this section may be given on such terms and conditions as the Secretary of State considers appropriate (including provision for repayment, with or without interest).
- (6) The Secretary of State is not authorised by this section to give financial assistance in the way described in subsection (4)(d) without the consent of the body corporate concerned.

Power to amend thresholds

41 Power to amend thresholds

- (1) The Secretary of State may by regulations amend or modify any provision mentioned in subsection (2) for the purpose of varying any amount for the time being specified in that provision.
- (2) The provisions are—
 - (a) section 3(6) (directions for resilience or continuity of supply purposes);
 - (b) section 8(6) (corresponding powers to make regulations);
 - (c) section 9(3) (power to require information);
 - (d) section 10(2)(a) and (b) (duty to report incidents);
 - (e) section 12(3) (information: general requirements);
 - (f) section 17(1)(b) (“qualifying asset”).

Regulations

42 Regulations

- (1) Regulations under this Act may make—
 - (a) different provision for different purposes or different areas;
 - (b) supplementary, incidental, consequential, transitional or saving provision.
- (2) A power to make regulations under this Act is exercisable by the Secretary of State by statutory instrument.
- (3) A statutory instrument containing regulations under this Act, other than—
 - (a) an instrument within subsection (4), or
 - (b) an instrument containing regulations under section 44(2),is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument which contains any of the following (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament—
 - (a) regulations under section 8 (corresponding power to make regulations);
 - (b) regulations under section 12 (information: general requirements);
 - (c) regulations under section 36(3)(b) (descriptions of action for specifying in enforcement undertaking);
 - (d) regulations under section 41 (power to amend thresholds).

Interpretation and final provisions

43 Interpretation

- (1) In this Act—
 - “company” means a company within the meaning of section 1 of the Companies Act 2006;
 - “compliance requirement” has the meaning given by section 34(2)(b);
 - “continuity of supply of crude oil based fuel” is to be interpreted in

accordance with section 2;

“crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes—

- (a) crude oils from which distillate fractions have been removed, and
- (b) crude oils to which distillate fractions have been added;

“crude oil based fuel” means any fuel comprised wholly or mainly of crude oil or substances derived from crude oil;

“decision period” has the meaning given by section 19(1) (read with sections 19(2), (3) and (5) and 20);

“discretionary requirement” has the meaning given by section 34;

“downstream facility owner” has the meaning given by section 1(3)(a);

“downstream oil sector activity” has the meaning given by section 1;

“downstream oil sector resilience” has the meaning given by section 2(1);

“enactment” includes—

- (a) an enactment contained in subordinate legislation (as defined in section 21 of the Interpretation Act 1978);
- (b) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;
- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- (e) any retained direct EU legislation;

“enforcement undertaking” has the meaning given by section 36;

“entity” means any entity (whether or not a legal person) that is not an individual and includes—

- (a) a body corporate, a corporation sole, a partnership or other unincorporated association and a trust, and
- (b) an entity incorporated or otherwise established under the law of a country or territory outside the United Kingdom;

“oil” means—

- (a) crude oil;
- (b) crude oil based fuels;
- (c) components;

“the owned facility”, in relation to a downstream facility owner, has the meaning given by section 1(3)(b);

“person carrying on downstream oil sector activities” is to be interpreted in accordance with section 1(7);

“qualifying acquisition” has the meaning given by section 16;

“qualifying asset”, in relation to an acquisition, has the meaning given by section 17;

“relevant activities or assets” is to be interpreted in accordance with section 1(4);

“the relevant business”, in relation to a qualifying acquisition or proposed qualifying acquisition (whether within the first, second or third case in section 16), has the meaning given by section 17(4);

“restoration requirement” has the meaning given by section 34(2)(c);

“terminal” means any site for the storage in bulk of oil;
“variable monetary penalty” has the meaning given by section 34;
“working day” means a day other than—

- (a) a Saturday or a Sunday; or
- (b) a day which is a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

- (2) In this Act references to the “capacity” of a business or of a facility or infrastructure are to be interpreted in accordance with section 3(7).
- (3) References in this Act to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.
- (4) For the purposes of the definition of “oil” in subsection (1) “component” means any substance (whether or not derived from crude oil) of a kind which is mixed with other substances to produce a crude oil based fuel.

44 Extent, commencement and short title

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act, apart from sections 42 and 43 and this section (which come into force on the day on which this Act is passed), comes into force on such day as the Secretary of State may by regulations appoint.
- (3) Regulations under this section—
 - (a) may appoint different days for different purposes;
 - (b) may make transitional, transitory or saving provision.
- (4) This Act may be cited as the Downstream Oil Resilience Act 2021.

SCHEDULES

SCHEDULE 1

Section 18

ACQUISITIONS: SUPPLEMENTARY

Introduction

- 1 This Schedule contains provisions for the purposes of Part 3 of this Act about—
- (a) the holding of shares, rights or interests “indirectly”,
 - (b) calculating shareholdings,
 - (c) voting rights, and
 - (d) other supplementary matters.

Shares, rights and interests held “indirectly”

- 2 (1) A person holds a share, right or interest “indirectly” if the person has a majority stake in an entity and that entity—
- (a) holds the share, right or interest, or
 - (b) is part of a chain of entities—
 - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
 - (ii) the last of which holds the share, right or interest.
- (2) For these purposes, A has a “majority stake” in B if—
- (a) A holds a majority of voting rights in B,
 - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B,
 - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
 - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (3) In the application of this paragraph to the right to appoint or remove a majority of the board of directors, an entity is to be treated as having the right to appoint a director if—
- (a) a person’s appointment as director follows necessarily from that person’s appointment as director of the entity, or
 - (b) the directorship is held by the entity itself.
- (4) In this paragraph—
- (a) the reference to the right to appoint or remove a majority of the board of directors of an entity is to the right to appoint or remove directors

- holding a majority of the voting rights at meetings of the board on all or substantially all matters, and
- (b) the reference to the board of directors, in the case of an entity that does not have such a board, is to be read as a reference to the equivalent management body of that entity.

Calculating shareholdings

- 3 (1) In relation to a company that has a share capital, a reference to holding “more than 25% of the shares” in that company is to holding shares comprised in the issued share capital of that company of a nominal value exceeding (in aggregate) 25% of that share capital.
- (2) In relation to a company that does not have a share capital—
 - (a) a reference to holding shares in that company is to holding a right to share in the capital or, as the case may be, profits of that company;
 - (b) a reference to holding “more than 25% of the shares” in that company is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that company.

Voting rights

- 4 (1) A reference to the voting rights in an entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members) to vote at general meetings of the entity on all or substantially all matters.
- (2) In relation to an entity that does not have general meetings at which matters are decided by the exercise of voting rights—
 - (a) a reference to exercising voting rights in the entity is to be read as a reference to exercising rights in relation to the entity that are equivalent to those of a person entitled to exercise voting rights in a company;
 - (b) a reference to exercising more than 25% of the voting rights in the entity is to be read as a reference to exercising the right under the constitution of the entity to block changes to the overall policy of the entity or to the terms of its constitution.
- 5 In applying this Schedule, the voting rights in an entity are to be reduced by any rights held by the entity itself.

Joint interests

- 6 If two or more persons each hold a share, right or interest jointly, each of them is treated as holding that share, right or interest.

Joint arrangements

- 7 (1) If shares, rights or interests held by a person and shares, rights or interests held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares, rights or interests of both of them.
- (2) A “joint arrangement” is an arrangement between the holders of shares, rights or interests that they will exercise all or substantially all the rights conferred by their respective shares, rights or interests jointly in a way that is pre-

determined by the arrangement.

- (3) “Arrangement” has the meaning given by paragraph 12.

Shares and interests held by nominees

- 8 A share held by a person as nominee for another is to be treated as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise

- 9 (1) Where a person controls a right, the right is to be treated for the purposes of this Act as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—
- (a) by that person,
 - (b) in accordance with that person’s directions or instructions, or
 - (c) with that person’s consent or concurrence.

Rights exercisable only in certain circumstances etc

- 10 (1) Rights that are exercisable only in certain circumstances are to be taken into account only—
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
 - (b) when the circumstances are within the control of the person having the rights.
- (2) But rights that are exercisable by an administrator or by creditors while an entity is in relevant insolvency proceedings are not to be taken into account even while the entity is in those proceedings.
- (3) “Relevant insolvency proceedings” means—
- (a) administration within the meaning of the Insolvency Act 1986,
 - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (c) proceedings under the insolvency law of another country or territory during which an entity’s assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are to continue to be taken into account.

Rights attached to shares held by way of security

- 11 Rights attached to shares held by way of security provided by a person are to be treated as held by that person—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person’s instructions, and
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise

them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person's interests.

Meaning of "arrangement"

- 12 (1) "Arrangement" includes—
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
 - (b) any convention, custom or practice of any kind.
- (2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

SCHEDULE 2

Section 37

CIVIL SANCTIONS

PART 1

DISCRETIONARY REQUIREMENTS

Notice of Intent

- 1 (1) Where the Secretary of State proposes to impose a discretionary requirement on a person, the Secretary of State must serve on the person a notice of what is proposed (a "notice of intent").
- (2) The person on whom the notice is served may make written representations and objections to the Secretary of State in relation to the proposed imposition of the discretionary requirement.
- (3) A notice of intent must include information as to—
- (a) the grounds for the proposal to impose the discretionary requirement;
 - (b) the right to make representations and objections;
 - (c) the effect of section 36 (enforcement undertakings);
 - (d) the circumstances in which the Secretary of State may not impose the discretionary requirement.
- (4) A notice of intent must also specify the period ("the notice period") within which written representations and objections with respect to the proposal may be made to the Secretary of State.
- (5) That period may not be less than 28 days beginning with the day after the day on which the notice of intent is received.

Final notice

- 2 (1) After the end of the notice period, the Secretary of State must decide whether to—
- (a) impose the discretionary requirement (with or without modifications), or

- (b) impose any other discretionary requirement.
- (2) Where the Secretary of State decides to impose a discretionary requirement on a person, the Secretary of State must serve on the person a notice specifying what that requirement is (“a final notice”).
- (3) A final notice must—
 - (a) set out the grounds for imposing the requirement;
 - (b) in the case of a variable monetary penalty, state—
 - (i) how payment may be made;
 - (ii) the period within which payment must be made;
 - (iii) the rate of interest payable for late payment of the penalty;
 - (c) set out the consequences of failing to comply with the requirement;
 - (d) explain the right of appeal conferred by paragraph 4.
- (4) The total amount of any interest imposed in accordance with sub-paragraph (3)(b)(iii) must not exceed the amount of the penalty.
- (5) The payment period must not be less than 28 days beginning with the day after the day on which the final notice is received.

Non-compliance penalty

- 3 (1) The Secretary of State may by notice impose a monetary penalty (a “non-compliance penalty”) on a person who fails to comply with—
 - (a) a compliance requirement, or
 - (b) a restoration requirement.
- (2) The amount of the penalty is to be determined by the Secretary of State and must not exceed £10,000,000.
- (3) The notice must—
 - (a) set out the grounds for imposing the non-compliance penalty;
 - (b) state how payment may be made;
 - (c) set out the period within which payment must be made (which must not be less than 28 days beginning with the day after the day on which the notice is received);
 - (d) set out the consequences of failure to pay within the period specified;
 - (e) explain the right of appeal conferred by paragraph 5.
- (4) If the compliance requirement or restoration requirement is complied with before the time set for payment of the non-compliance penalty, the penalty is not payable.

Appeal against discretionary requirement

- 4 (1) A person on whom a discretionary requirement is imposed—
 - (a) may appeal against the Secretary of State’s determination under section 34(1)(a) that the person has committed an offence falling within subsection (3) of that section;
 - (b) may also appeal against the decision to impose the discretionary requirement on any of the following grounds—
 - (i) (in the case of a variable monetary penalty) that the amount of the penalty is unfair or unreasonable;

- (ii) (in the case of a compliance requirement or restoration requirement) that the nature of the requirement is unfair or unreasonable;
 - (iii) that the decision is unfair, unreasonable or wrong for any other reason.
- (2) Where the discretionary requirement is a variable monetary penalty, the penalty is suspended pending determination of the appeal.
- (3) On an appeal under this paragraph the First-tier Tribunal may—
 - (a) confirm, vary or withdraw the discretionary requirement,
 - (b) remit the decision whether to confirm the discretionary requirement, or any matter relating to that decision, to the Secretary of State;
 - (c) award costs or, in Scotland, expenses.
- (4) Where an appeal under this section is made (wholly or partly) in reliance on sub-paragraph (1)(a), the First-tier Tribunal must withdraw the discretionary requirement unless the Secretary of State proves that the person has committed the offence in question, according to the same burden and standard of proof as would apply if the Secretary of State were seeking to prove that matter in a criminal prosecution.

Appeal against non-compliance penalty

- 5 (1) A person on whom a non-compliance penalty is imposed may appeal to the First-tier Tribunal against the decision to impose it.
- (2) The grounds for appeal are that the decision is—
 - (a) based on an error of fact,
 - (b) wrong in law,
 - (c) unfair or unreasonable for any reason (for example because the amount is unreasonable, or in the light of the variation or withdrawal of the compliance requirement or restoration requirement), or
 - (d) wrong for any other reason.
- (3) The non-compliance penalty is suspended pending determination of the appeal.
- 6 On an appeal under paragraph 5 the First-tier Tribunal may—
 - (a) confirm, vary or withdraw the non-compliance penalty,
 - (b) remit the decision whether to confirm the non-compliance penalty, or any matter relating to that decision, to the Secretary of State;
 - (c) award costs or, in Scotland, expenses.

Recovery of financial penalties

- 7 (1) Amounts payable to the Secretary of State of the kind mentioned in sub-paragraph (2) are recoverable summarily (or, in Scotland, recoverable) as a civil debt (but this does not affect any other method of recovery).
- (2) The amounts are—
 - (a) a variable monetary penalty and any interest payable on it, or

- (b) a non-compliance penalty.

Payment of penalties into Consolidated Fund

- 8 The Secretary of State must pay any sums received by the Secretary of State in respect of any of the following into the Consolidated Fund—
 - (a) a variable monetary penalty and any interest payable on it;
 - (b) a non-compliance penalty.

PART 2

ENFORCEMENT UNDERTAKINGS

Procedure

- 9 (1) The Secretary of State must publish a procedure for entering into enforcement undertakings.
- (2) The Secretary of State may revise the procedure (and must publish any revised procedure).
- (3) The Secretary of State must consult any persons the Secretary of State considers appropriate before publishing or revising the procedure.

Variation of terms

- 10 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both parties agree in writing.

Compliance certificates

- 11 (1) Where the Secretary of State is satisfied that an enforcement undertaking has been complied with, the Secretary of State must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”).
- (2) A person may at any time apply to the Secretary of State for a compliance certificate.
- (3) The Secretary of State may specify in what form an application under sub-paragraph (2) must be made and what information (if any) must accompany it.
- (4) Where an application is made under sub-paragraph (2), the Secretary of State must give the applicant notice in writing of the Secretary of State’s decision on the application within 14 days beginning with the day after the day on which the application is received.

Inaccurate, incomplete or misleading information

- 12 Where the Secretary of State is satisfied that a person who has given an enforcement undertaking has provided inaccurate, misleading or incomplete information in relation to the undertaking, the Secretary of State may treat the person as having failed to comply with the undertaking (and, if the Secretary of State decides so to treat the person, must by notice revoke any compliance certificate given to the person in respect of the enforcement undertaking).

Appeal against decision under paragraph 11 or 12

- 13 (1) An appeal lies to the First-tier Tribunal against a decision of the Secretary of State to refuse an application for a compliance certificate or, in reliance on paragraph 12, to treat the person as having failed to comply with an enforcement undertaking.
- (2) The grounds for appeal are that the decision is—
 - (a) based on an error of fact,
 - (b) wrong in law,
 - (c) unfair or unreasonable, or
 - (d) wrong for any other reason.
- (3) On an appeal under this paragraph, the First-tier Tribunal may—
 - (a) confirm the Secretary of State's decision or direct that it is not to have effect;
 - (b) award costs or, in Scotland, expenses.

DOWNSTREAM OIL RESILIENCE DRAFT BILL

Explanatory Notes

Purpose of the Explanatory Notes

These Explanatory Notes relate to the Downstream Oil Resilience Bill as published in draft on 7 June 2021.

- These Explanatory Notes have been developed by the Department of Business Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it.
- They do not form part of the Bill and have not been endorsed by Parliament. These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.

These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Overview of the Bill

- 1 The Downstream Oil Resilience Bill introduces measures that will enable Government to support industry in maintaining the security of fuel supply to consumers. Those measures are described below:
 - a) **Directions** - to direct downstream oil sector businesses (including large hauliers or port authorities linked to significant pieces of downstream oil infrastructure) for the purposes of resilience or to ensure the continuity of fuel supply. This may be individually within a limited group of large downstream oil sector businesses/undertakers (which can be done by a written direction addressed to that individual) or for a wider class (which would be done by delegated legislation).
 - b) **Information** - to require information for the purpose of downstream oil sector resilience (as defined within the Bill) in terms of both incident reporting and routine information about the supply chain.
 - c) **Restriction on acquisitions (control test)** - to restrict persons gaining important levels of control in significant downstream infrastructure, unless they meet tests related to the financial stability and technical competence in place relating to that piece of infrastructure.
 - d) **Financial assistance** - to provide financial assistance for downstream oil sector resilience and continuity of supply purposes.

Policy background

- 1 The downstream oil sector comprises over 200 companies involved in the refining, importing, distribution and marketing of petroleum products. The sector plays a key role in UK energy security, supplying products that are vital to the UK's economy and way of life. In particular, as at 2019, petroleum-based fuels provide 96% of the energy for the transport sector.¹ Furthermore, the downstream oil sector estimates it supports the employment of over 120,000 people.²
- 2 In the main, the sector is efficient, flexible and effective in ensuring the continuity of fuel supply. However, it is also responding to global market factors and, as it changes, the ability of the UK supply system to protect the continuity of fuel supplies and be resilient to disruptions needs to be maintained. There is no central authority or mechanism in the downstream oil supply system by which supply capacity can be managed. Instead, supply capacity is determined by individual enterprises, and capacity investment and rationalisation are driven by competition. In a competitive market place, participants may not know the supply capability of their competitors or, consequently, the system as a whole.
- 3 The UK market for petroleum products is a mature market, facing both changing patterns of demand and high levels of global competition. The consequence has been:
 - a) fragmenting supply chains with major oil companies, which used to run vertically integrated well-to-pump operations, divesting themselves of categories of assets or outsourcing some operations; and
 - b) relatively high utilisation rates and closures of spare or uneconomic capacity. For example, currently there are six UK oil refineries, down from a high of 19 in 1975, and the number of filling stations has declined from around 18,000 sites in 1990 to 8,400 now.
- 4 Furthermore, with the global move towards decarbonisation, the market expects a long-term reduction in demand for oil-based transport fuels and change in the product mix due to continued improvements in vehicle fleet efficiency and increased adoption of electric vehicles and other low-carbon modes of transport. As the sector responds to these changes, the ability of the system to protect the continuity of fuel supplies and be resilient to disruptions must be maintained.
- 5 There are a number of inherent risks to fuel infrastructure, including accidents, severe weather, malicious threats, industrial action, and

¹ Department for Transport statistics, Table TSG0302 (ENV0102)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/761498/env0102.ods

² UKPIA Statistical Review 2018 <https://www.ukpia.com/media/1005/the-economic-contribution-of-the-downstream-oil-sector-evidence-paper.pdf>

financial failure. As in other important sectors like this, Government works with fuel suppliers to mitigate such risks. However, not all risk can be prevented.

- 6 The Department for Energy and Climate Change (now the Department for Business, Energy and Industrial Strategy, BEIS) undertook an internal research project in 2014-15, which examined evidence of Great Britain fuel supply system resilience and risks to supply. The research findings took account of information supplied by many fuel companies. The findings of the research project were: There are a number of major GB infrastructure sites which are essential to regional fuel supply because other local infrastructure is too small to replace them if they cease supply (also referred to as 'essential sites').
 - a) Supply chains are very dynamic and can adjust to disruption at these sites over weeks but not immediately.
 - b) The key constraint is the finite logistical capability of pipelines and tankers within the country to distribute fuel to retail sites – not a national lack of access to fuel from UK refineries or imports.
 - c) A sudden failure at the identified essential sites could not be compensated for immediately and fuel shortages could occur within days.
 - d) There is a market failure in that, while individual suppliers invest in the resilience of their own supply chain, there is no mechanism for them to share the costs of system resilience as a whole.
- 7 From discussions BEIS has held with industry, there were several features of the companies' approach to managing risk that give us cause for concern when we consider resilience to lower probability but high impact risks.
- 8 In order to address these, Government's approach is to put in place a small number of measures that provide Government with the tools to identify fuel supply risk and support industry in insuring fuel supply resilience, with further back-stop powers to protect fuel supply resilience when required. These measures are designed to work with the structure of the fuel supply market and are set out in the following clauses.
- 9 BEIS held a consultation ('Proposals to strengthen the resilience of fuel supply to UK consumers'³) from 17 October 2017 to 12 December 2017 on the measures now included in the draft Bill. The consultation served to obtain a formal view from industry and other interested parties on the proposed measures, seek ideas as to how these proposals can be

³ Consultation document and Government <https://www.gov.uk/government/consultations/downstream-oil-supply-resilience>

improved, and gather further evidence on regulatory impacts.

- 10 A response to the consultation was published on 17 April 2018. The response confirmed that Government has heard clearly industry's calls for a light-touch approach to measures, and has given careful consideration to minimise any impacts on market dynamics and competitiveness.
- 11 Since the response was published, Government have revised some of the policies associated with the Bill. The most significant change is that BEIS no longer intends to use this Bill to take forward the measures relating to 'industry schemes'. In the consultation document and government response, the lead scheme proposed under this power was the transfer of the costs and management of the Reserve Tanker Fleet from government to industry. BEIS has concluded that the complexities and additional costs of setting up an industry-run scheme currently outweigh the benefits and it is more appropriate for BEIS to continue to lease and manage the Reserve Tanker Fleet capability at this time.
- 12 The draft Downstream Oil Resilience Bill sets out further detail on the Government's approach to maintaining and protecting resilience. BEIS will engage with stakeholders to seek views and continue to develop the proposed legislation.

Legal background

- 1 Government's powers to monitor sector risks, support industry in improving fuel supply resilience and protect fuel supply are currently restricted in scope (for example, under the Offshore Safety Act 1992) or only available for use during an emergency or crisis situation. Further, powers to direct may not allow Government to act in advance of a crisis, in order to prevent a problem occurring. Existing powers include:
 - a) Energy Act 1976: Government has wide powers to regulate or prohibit the production, supply, acquisition or use of petroleum products, fuel or electricity where: "there exists or is imminent...an actual or threatened emergency affecting fuel or electricity supplies".
 - b) Offshore Safety Act 1992: powers that allow directions to be given: "for preserving security of petroleum and petroleum products". The power of direction is limited to security purposes, and can only be used in relation to refineries, or terminals that receive crude oil directly or indirectly from a UK offshore installation.
 - c) Civil Contingencies Act 2004: powers for government to make emergency regulations to deal with actual or threatened emergencies where, for example, there is a serious threat to human welfare arising from disruption to the supply of money, food, water, energy or fuel, or a threat to communication or transport systems.
 - d) Enterprise Act 2002: power for Government to intervene in relevant mergers on national security (which can include security of supply), financial stability or media plurality grounds. For Government to be able to intervene, particular turnover or share of supply tests must be met.

Territorial extent and application

- 1 Clause 44 sets out the territorial extent of the draft Bill; that is the jurisdictions in which the draft Bill forms part of the law. The extent of a Bill can be different from its application. Application concerns where a Bill produces a practical effect.
- 2 The draft Bill extends and applies to the whole of the United Kingdom. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the draft Bill relate are not considered to be within the legislative competence of the Scottish Parliament or Senedd Cymru, and no legislative consent motion is being sought in relation to any of the provisions of the draft Bill. A legislative consent motion will be sought from the Northern Ireland Assembly.
- 3 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of the Bill

Part 1: Key definitions

Clause 1: “Downstream oil sector activity” and other key concepts

- 1 Clause 1 sets the definition of downstream oil sector activities for the purposes of the Bill.
- 2 Subclause (1) serves to define “downstream oil sector activity” as (a) that which is carried out in the United Kingdom in the course of a business, and (b) that which contributes, either directly or indirectly, to the supply of crude oil-based fuels to consumers or businesses in the UK.
- 3 The intention of subclause (2) is to capture all activities that take place in the downstream oil supply chain. These activities are:
 - a) storing oil;
 - b) handling oil;
 - c) the carriage of oil by sea or inland water;
 - d) transporting oil by road;
 - e) conveying oil by pipes;
 - f) refining or otherwise processing oil.
- 4 Subclause (3) defines a “downstream facility owner” as the owner of a pipeline, terminal or other facility or infrastructure which is used for the purpose of downstream oil sector activities (as defined in clause 1). This can be the whole or part of a facility or infrastructure asset. For example, where a tank storage facility is used to store several types of liquid products only the part of the facility used in relation to oil (as defined in the Bill) would be in scope. If an owner of oil organises and makes payment for storage of that oil, the owner would be considered to be “storing” oil. For example, where oil is stored in a terminal and the terminal owner is different from the oil owner - the terminal operator, owner of the terminal, and owner of the oil stored within the terminal would all fall within scope through subclauses (1)(a) and (b) respectively. Subclause (4) explains what the Bill means when referring to a person’s “relevant activities or assets” in the downstream oil sector. Subclause (6) further specifies that ‘owner’ in relation to any facility and infrastructure means a person in whom these assets are vested, or a lessee of the asset. In addition, subclause (7) defines a “person carrying on downstream oil sector activities” as including any person carrying on the activities listed in subclause (2), whether or not they are the owner of the oil.
- 5 Subclause (5) clarifies that “oil”, as referred to in subclause (2), does not include crude oil which has not yet entered a refinery or terminal in the UK. The purpose of subclause (5) is to distinguish oil involved in downstream oil sector activities from that of upstream oil and gas

activities.

Clause 2: Resilience and Continuity of Supply

- 6 The purpose of clause 2 is to define the terms 'downstream oil sector resilience' and 'continuity of supply of crude oil-based fuel'.
- 7 'Downstream oil sector resilience': subclause (1) defines this as the capability of persons carrying on downstream oil sector activities, and of facility owners to manage the risk of, reduce the potential adverse impact of, and facilitate recovery from disruptions to their relevant activities.
- 8 'Continuity of supply of crude oil based fuel': subclause (2) defines the supply of crude oil based fuels to consumers and businesses in the UK as reliable and continuous, and maintained at normal levels. 'Normal levels' are further defined in subclause (3) as those that are not substantially below those that are normal (taking account of seasonal variation), and are consistent with a reasonable balance between supply and demand.

Part 2: Powers for resilience purposes

Directions for resilience purpose or continuity purposes

Clause 3: Directions for resilience or continuity of supply purposes

- 9 Clause 3 allows the Secretary of State to direct a person to do anything in relation to their relevant activities or assets for one of three purposes:
- a) to maintain or improve downstream oil sector resilience (subclause (1));
 - b) where there is disruption to, or failure of, continuity of supply, for the purpose of restoring continuity of supply or counteracting the disruption or failure, or its potential adverse impacts (subclauses (2) and (3)); or
 - c) where the Secretary of State considers that there is a significant risk of disruption to, or failure of, continuity of supply, for the purpose of reducing the risk or reducing the potential adverse impact (subclauses (4) and (5)).
- 10 The relevant persons to whom directions may be issued are specified in subclauses (6) as (a) persons carrying on downstream oil sector activities in the course of a business that has capacity in excess of 500,000 tonnes, and (b) the owner of a downstream oil facility that has capacity in excess of 20,000 tonnes. Subclause (7) expands further that a business ‘has capacity in excess of’ at any time in a calendar year if it carried on downstream oil sector activities that exceeded the specified number of tonnes in the previous calendar year. Similarly, a facility or infrastructure ‘has capacity in excess of’ at any time in a calendar year if it was used for the purposes of downstream sector activities that exceed the specified number of tonnes in the previous calendar year.

Clause 4: Clause 3: supplementary

- 11 This clause provides additional information on the power of direction set out in clause 3. As specified in subclause (1), a direction may be general, or specific; examples include acquiring and installing specific equipment, or carrying out specific work, at the person’s own expense). A direction may, for example, impose a time limit or a requirement that must be complied with at specific intervals; and they may be imposed for a limited period or indefinitely, as set out in subclause (2).
- 12 Subclause (3) clarifies that a direction to ‘do’ anything may also include refraining from doing anything, or the achievement of a specified outcome.
- 13 Finally, under subclause (4) a direction may include different provision for different purposes, and may be modified or revoked by a later direction.

Clause 5: Procedure for giving directions

- 14 Clause 5 describes the process for giving a resilience direction. Under subclause (1) before issuing a direction, the Secretary of State must give the intended recipient notice, accompanied by a draft of the proposed

direction. Subclause (2) sets out that the notice must include the following: (a) a draft of the direction, (b) an explanation for the direction, (c) timing of when the direction would come into effect, and (d) the period in which the recipient may make a written representation with regard to the proposed direction. The period for making a representation must not be less than 14 days and starts the day on which the notice is given, as set out in subclause (3).

- 15 Subclauses (4) and (8) set out the consultation the Secretary of State must carry out before issuing a direction. For directions relating to Great Britain, the Secretary of State must consult with: (i) the Health and Safety Executive (including in its capacity as one of the persons who (acting jointly) constitute the “competent authority” as defined in Regulation 4(b) of the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483); and (ii) (as appropriate) the Environment Agency, the Natural Resources Body for Wales or the Scottish Environment Protection Agency, in each case in their capacity as part of that competent authority. For directions relating to Northern Ireland, the Secretary of State must consult with the Health and Safety Executive for Northern Ireland in Northern Ireland (including in its capacity as one of the persons who (acting jointly) constitute the “competent authority” as defined in Regulation of the Control of Major Accident Hazards Regulations 2015 (S.R. (N.I.) 2009 No. 325) and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (in its capacity as part of the competent authority). In each case, the Secretary of State must also consult any other persons the Secretary of State considers appropriate.
- 16 Under subclause (5), following any representation made by the intended recipient of the direction, or those consulted under subclause (4), the Secretary of State must decide whether to issue the proposed direction, with or without modifications. Written notice of this decision must then be given to intended recipient, including the direction and the time when the direction is to take effect, as set out in subclauses (6) and (7).

Clause 6: Appeal against directions

- 17 Clause 6(1) sets out that a person may appeal to the First-tier Tribunal against a direction on the grounds that the directions was based on an error of fact, wrong in law, or unfair or unreasonable. Clause (2) states that the Tribunal may confirm, or cancel the direction, or refer the matter back to the Secretary of State for reconsideration, with any directions the Tribunal considers appropriate. To clarify, a Tribunal direction is separate from any direction under clause 3 of this Bill.

Clause 7: Offence of failure to comply with a direction

- 18 Clause 7(1) sets out that any person who without reasonable excuse fails to comply with a direction given to them under clause (3) commits an offence.
- 19 Subclause (2) specifies that a person who commits such an offence is liable: (a) on summary conviction in England and Wales to imprisonment for a term not exceeding 12 months and/or a fine; (b) on summary

conviction in Scotland, to imprisonment for term not exceeding 12 months and/or a fine no more than the statutory maximum; (c) on summary conviction in Northern Ireland, to imprisonment for term not exceeding six months and/or a fine no more than the statutory maximum; (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years and/or a fine.

- 20 Subclause (3) clarifies that, until paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 comes into force, the term of 12 months in subclause (2)(a) is to be read as 6 months.

Clause 8: Corresponding powers to make regulations

- 21 Clause 8 confers a power to make regulations in correspondence with the power of direction set out under clause 3. Subclause (1) sets out that, through making these regulations, the Secretary of State may, for the purpose of maintaining or improving downstream oil sector resilience, require a person to anything that a person could be required to do under clause (3)(1). Subclauses (2) and (3) set out that where there is disruption to, or a failure of, continuity of supply of crude oil based fuel, the Secretary of State may make regulations to require a person to whom section 3 applies to do anything in relation to their relevant assets or activities that they could be required to do by a direction under subclause (3) of Clause 3. Subclauses (4) and (5) set out that where the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of crude oil based fuel, the Secretary of State may make regulations to require a person to whom section 3 applies to do anything in relation to their relevant assets or activities that they could be required to do by a direction under subclause (5) of Clause 3. As before, subclause (8) clarifies that references to ‘do’ anything include refraining from doing anything, or the achievement of a specified outcome.
- 22 Subclause (6) sets out that the persons who can be directed under these regulations are: (a) a person carrying on downstream oil sector activities in the course of a business with capacity in excess of 1,000 tonnes, and (b) the owner of a downstream oil facility with capacity in excess of 1,000 tonnes.
- 23 Subclause (7) allows for regulations made under this clause to designate non-compliance as an offence.
- 24 Subclauses (9) and (10) set out the consultation the Secretary of State must carry out before issuing a direction. For regulations relating to Great Britain, the Secretary of State must consult with: (i) the Health and Safety Executive (including in its capacity as one of the persons who (acting jointly) constitute the “competent authority” as defined in Regulation 4(b) of the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483); and (ii) (as appropriate) the Environment Agency, the Natural Resources Body for Wales or the Scottish Environment Protection Agency, in each case in their capacity as part of that competent authority. For regulations relating to Northern Ireland, the Secretary of State must consult with the Health and Safety Executive for Northern Ireland in

Northern Ireland (including in its capacity as one of the persons who (acting jointly) constitute the “competent authority” as defined in Regulation of the Control of Major Accident Hazards Regulations 2015 (S.R. (N.I.) 2009 No. 325) and the Department of Agriculture, Environment and Rural Affairs in Northern Ireland (in its capacity as part of the competent authority). In each case, the Secretary of State must also consult any other persons the Secretary of State considers appropriate.

Information

Clause 9: Power to require information

- 25 Clause 9 sets out the Secretary of State may, for the purpose of maintaining or improving downstream oil sector resilience, require a person carrying on downstream oil sector activities to provide information relating to those activities by issuing a notice in writing. Subclause (4) states that the notice may specify the manner in which the information should be provided, as well as the time limits and intervals for providing the information.
- 26 Subclause (3) sets out that this clause applies to persons carrying on downstream oil activities in the course of a business with capacity in excess of 1,000 tonnes, and owners of downstream oil facilities with capacity in excess of 1,000 tonnes.

Clause 10: Duty to report incidents

- 27 Clause 10 places a duty on downstream oil sector undertakings to notify the Secretary of State of an actual or threatened disruption to fuel supplies or downstream oil resilience. Subclause (1) creates a duty to notify the Secretary of State as soon as possible any time a person knows, or suspects, a notifiable incident is occurring or has occurred. Subclause (2) sets out that the duty to report incidents applies to a person carrying out downstream oil sector activities in the course of a business, or the owner of a downstream facility, both with capacity in excess of 500,000 tonnes.
- 28 Subclause (2)(c) states that the duty to notify also applies to a person of a class or description as specified in regulations made by the Secretary of State under this subclause. Further to this, subclause (7) sets out that regulations under subclause (2)(c) may specify the meaning that ‘relevant activities or assets’ is to have relating to the persons of that class or description.
- 29 Subclause (3) defines a “notifiable incident” to mean an incident which affects the person’s relevant activities or assets in such a way as to pose a significant risk of: (a) disruption or failure to the continuity of the supply of crude oil based fuels , or (b) adverse effect on downstream oil sector resilience.
- 30 Subclause (6) clarifies that notification of an incident should be made in writing. If not done so in the first instance, it must be confirmed in writing as soon as possible following the initial contact.

- 31 Subclause (4) sets out that the Secretary of State can require further information on an incident by notice in writing. Under subclause (5), this notice may specify the manner and the timeframes in which the information is to be provided.

Clause 11: Contravention of requirement under clause 9 or 10

- 32 Clause 11 sets out the offences associated with clauses 9 or 10.
- 33 Subclause (1) states that a person who, without reasonable excuse, fails to comply with a requirement to provide information under subclause 9(1) or further information on an incident under subclause 10(4) commits an offence.
- 34 Subclause (2) states that a person who, without reasonable excuse, fails to comply with the duty to notify of an incident under subclause 10(1) commits an offence.
- 35 Subclause (3) states that a person who commits an offence under clause 11 is liable: (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or a fine (or both); (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- 36 Subclause (4) clarifies that, until paragraph 24(2) of Schedule 22 to the Sentencing Act comes into force, the term of 12 months in subclause (2)(a) is to be read as 6 months.

Clause 12: Provision of information at specified intervals

- 37 Clause 12 provides for the Secretary of State to make regulations requiring a person to whom this clause applies (as set out in subclause (3)) to provide information on their relevant downstream oil activities or assets to the Secretary of State at prescribed intervals. As specified in subclause (2), the power to make regulations under this clause may only be exercised for the purpose of maintaining or improving downstream oil sector resilience.
- 38 Subclause (3) specified that the clause applies to (a) a person carrying on downstream oil activities in the course of a business with capacity in excess of 1,000; and (b) a downstream facility owner, if the facility has capacity in excess of 1,000 tonnes.
- 39 Subclause (4) sets out that the regulations may set out the information to be provided, as well as the manner and timings in which the information should be provided.
- 40 Subclause (5) states that any person who fails to comply with a requirement imposed by the regulations, without a reasonable excuse, commits an offence.

Clause 13: Disclosure of information held by the Secretary of State

- 41 Clause 13 sets out that information obtained under clauses 9, 10 or 12 may be disclosed to (2) (a) any government department or devolved authority for the purpose of improving or maintaining downstream oil resilience; or, (b) if disclosure is needed for criminal proceedings.
- 42 Under subclause (4) 'devolved authority' is further defined to mean the Welsh Ministers, the Scottish Ministers or a Northern Ireland department.
- 43 Subclause (3) clarifies that clause 13 does not authorise a disclosure that contravenes data protection legislation (defined in section 3 of the Data Protection Act 2018) or is prohibited by the Investigatory Powers Act 2016 (Parts 1 to 7, or Chapter 1 of Part 9). In determining whether a disclosure would do either of those things, the powers conferred by clause 13 are to be taken into account.

Clause 14: Disclosure of information by HMRC

- 44 Clause 14 makes provision for an information sharing gateway with Her Majesty's Revenue and Customs (HMRC). Information sharing by HMRC to the Secretary of State is limited for the purposes of facilitating the exercise by the Secretary of State of functions relating to downstream oil sector resilience. Subclause (2) states that, unless the Commissioners for HMRC have given their consent: (a) information can only be used for the same purpose as its disclosure; and, (b) further disclosure is not permitted.
- 45 If a person discloses information in contravention of subclause (2)(b) where a person's identify is specified in the disclosure or can be deduced from it, then section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies as it does to a disclosure of information in contravention of section 20(9) of that Act. Subclause (4) clarifies that this does not limit the circumstances in which information may be disclosed under section 18(2) of that Act, or under any other enactment or rule of law.
- 46 As above, subclause (5) clarifies that clause 14 does not authorise a disclosure that contravenes data protection legislation (defined in section 3 of the Data Protection Act 2018) or is prohibited by the Investigatory Powers Act 2016 (Parts 1 to 7, or Chapter 1 of Part 9). In determining whether a disclosure would do either of those things, the powers conferred by clause 14 are to be taken into account.

Part 3: Restriction on acquisitions

Restriction on acquisitions

47 Part 3 sets out that the Secretary of State can place restrictions on acquisitions taking place in the downstream oil sector. This was referred to as the “Ownership/Control Test” in the consultation document.

Clause 15: Restriction on making qualifying acquisitions

48 Under subclause (1) no person may make a qualifying acquisition (as defined in clause 16) without the written consent of the Secretary of State.

49 Application: subclause (2) sets out that an application under this clause must specify: (a) the property (under subclause 16(2)(a) or (4)(b)) or company (under clause 16(6)(b)) being acquired; (b) the holding or interest proposed for acquisition; and, (c) the proposed date of acquisition.

50 Timings: subclause (3) states that the proposed date of acquisition must be 13 weeks after the date on which the application is made. Subclause (4) places an obligation on the Secretary of State to acknowledge receipt of an application within five working days.

51 Process: Under subclause (5), the Secretary of State may by regulations make provisions under this clause about the: (a) form; (b) included information; (c) documents; (d) fees; (e) time limits in relation to the application.

Clause 16: “Qualifying acquisitions”

52 Clause 16 sets out that, for the purposes of this Bill, an acquisition is considered a “qualifying acquisition” in the three cases where:

a) subclauses (2) and (3): a person acquires an interest in a qualifying asset (clause 17) the result of which is that the value of the interest held by the person in the qualifying asset is more than 25% of the value of the asset;

b) subclauses (4) and (5): a person acquires shares or rights the result of which is that the value of the interest held by the person in the qualifying asset is more than 25% of the value of the asset; or

c) subclauses (6) and (7): a person acquires shares or rights and as a result the person holds directly or indirectly more than 25% of the shares or more than 25% of the voting rights in the critical asset-owning company.

53 A company is defined as a “critical asset-owning company” in subclause (8) if the value of any interest they directly or indirectly hold in a qualifying asset is more than 25% of the value of that asset.

54 Subclause (9) defines “interest” to mean any interest, whether legal or beneficial.

Clause 17: “Qualifying asset”

- 55 Subclause 17(1) defines “qualifying asset” in relation to an acquisition as an asset that: (a) is located in the United Kingdom; and (b) is used in the calendar year preceding the date of the acquisition in relevant operations carried out in relation to more than 500,000 tonnes of oil in the course of a business. Subclause (4) clarifies that it is this business, as described in subclause (1)(b), that is referred to as ‘the relevant business’ in relation to an actual or proposed qualifying acquisition as defined in clause 16.
- 56 Subclause (2) defines “relevant operations” as the following in relation to oil: (a) storing; (b) handling; (c) transporting by road; (d) conveying by pipes; (e) refining or otherwise processing.
- 57 Subclause (3) provides that operations in relation to crude oil where that oil has not yet entered a refinery or terminal in the UK are not considered ‘relevant operations’ for the purposes of this clause. This is to exclude upstream oil operations from the scope of this Bill.

Clause 18: “Indirect” holdings and other supplementary matters

- 58 Schedule 1 contains provisions regarding (a) the indirect holding of shares, rights or interests, (b) calculating shareholdings, (c) voting rights, and (d) other supplementary matters.

Procedure following application for consent

Clause 19: The decision period

- 59 Under subclause (1) an obligation is placed on the Secretary of State to decide an application made under clause 15 within the “decision period”, which is defined as 13 weeks from the day on which the Secretary of State acknowledges receipt of the application.
- 60 Subclause (2) enables the Secretary of State to extend the decision period by no more than 4 weeks, and only where there are special reasons as to why the decision cannot be made within the original decision period.
- 61 Subclause (3) sets out that only one extension is possible unless the Secretary of State considers that there are exceptional circumstances as a result of which the decision cannot be made without a further extension – in which case an extension can be for a further four weeks. Under subclause (4) repeated extensions under exceptional circumstances are allowed, as well as an extension where the decision period has been interrupted by an application for further information under clause 20.
- 62 Subclause (5) states that the decision period may also be extended if the Secretary of State considers that: (a) the information required for making a decision is incomplete (clause 20); or (b) a relevant person has failed to comply with any requirement of a notice under the power to obtain information from third parties (clause 21).
- 63 Subclause (6) defines ‘relevant person’ as falling into four categories. Firstly, any person carrying on relevant operations in excess of 500,000

tonnes of oil in the preceding calendar year (as defined in (17)(1)(b). Secondly, a critical asset owning company (as specified in (16)(6)(b)). Thirdly, any person who, either alone or as a group, has control of a person mentioned in the first and second category. Subclause (7) further defines a person or group of persons able to directly or indirectly materially influence the policy of a body but without having a controlling interest in that body is to be regarded having control of it. Finally, the last category is any officer, employee or agent of any person mentioned in the preceding three categories.

- 64 An obligation is placed on the Secretary of State under subclause (8) to inform the applicant in writing of: (a) the decision period and its expiry date, and (b) any change to the expiry date owing to the extensions allowed in subclause (2) or (3), or requests for further information as per clause 20.
- 65 Subclause (9) sets out that unless the Secretary of State decides the application within the time allowed, or in accordance with this Part, the Secretary of State is treated as having consented to the acquisition.

Clause 20: Applications: further information

- 66 Subclause (1) enables the Secretary of State to require the applicant in writing to provide further information at any time within the decision period.
- 67 Subclause (2) sets out that, on the first request for additional information, the decision period will be interrupted until either the date the information is received, or the end of 20 working days after the date of the request, whichever is earliest. Subclause (3) confirms that, after the first, subsequent requests for further information can be made but will not further interrupt the decision period.
- 68 Subclause (4) set outs that once the Secretary of State receives the further information, the Secretary of State must acknowledge receipt in writing within five working days.

Clause 21: Power to obtain information from third parties

- 69 Subclause (1) enables the Secretary of State, through a request in writing, to require relevant information from a person other than the applicant and in a timeframe, form and manner specified in the notice. "Relevant information" is defined in subclause (2) as information which is reasonably required for the purpose of determining the application.
- 70 Subclause (3) sets out that a notice must: (a) state the purpose for the information; and, (b) include information about the possible consequences for non-compliance. Subclause (4) clarifies that a person is not required to provide any information which they could not be compelled to provide in evidence in civil proceedings before the court. Subclause (8) further defines 'the court' as the High Court in England, Wales and Northern Ireland, and the Court of Session in Scotland.
- 71 Subclause (5) sets out that any person who without reasonable excuse fails to comply with a notice under this clause commits an offence.

- 72 Subclause (6) specifies that a person who commits such an offence is liable: (a) on summary conviction in England and Wales to imprisonment for term not exceeding 51 weeks and/or a fine; (b) on summary conviction in Scotland, to imprisonment for term not exceeding 12 months and/or a fine no more than level 5 on the standard scale; (c) on summary conviction in Northern Ireland, to imprisonment for term not exceeding 6 months and/or a fine no more than level 5 on the standard scale.
- 73 Subclause (7) clarifies that, until section 281(5) of the Criminal Justice Act 2003 comes into force, the term of 51 weeks in subclause (6)(a) is to be read as 6 months.

Decision of an application

Clause 22: Decision of an application

- 74 Subclause (1) obliges the Secretary of State to decide on an application under clause 15 by: consenting unconditionally; consenting with conditions; or refusing consent.
- 75 In deciding which action to take, subclause (2) provides that the Secretary of State must consider the following:
- a) any risks that the acquisition poses to the financial stability of the relevant acquisition. Subclause (7) provides that “Financial stability” in relation to the relevant business is to be determined by reference to the level of risk that the relevant operations might diminish or cease because of a lack of funds or a person’s insolvency;
 - b) any risk that the acquisition will adversely affect the availability and effective use of the required technical resources required for the sound management of the relevant business. Subclause (8) further clarifies that “technical resources” includes personnel, and “sound management of the relevant business” includes the safe and competent management of the relevant operations.
- 76 Subclause (3) obliges the Secretary of State to also take regard to: (a) the desirability of securing continuity of supply of crude oil based fuel; (b) the likely influence that the applicant will have on the relevant business.
- 77 Subclause (4) obliges the Secretary of State to impose conditions only where the application would be refused if the conditions were not imposed.
- 78 Under subclause (5) the Secretary of State may only refuse an application if there are reasonable grounds for doing so on the basis of matters set out in subclause (2), or if the information required under clauses 15 or 20 has not been provided or is incomplete.
- 79 Under subclause (6) the Secretary of State must notify the applicant of the decision before the expiry of the decision period.

Clause 23: Statement about decisions under clause 22

- 80 Subclauses (1) and (2) places an obligation on the Secretary of State to issue a statement as to how they propose to exercise the functions set out in clause 22, and, in particular, specify the factors to be taken into consideration when assessing risks related to financial stability and sound management of the business (as set out in (22)(2)).
- 81 Subclauses (3) and (4) enable the Secretary of State to revise the statement whenever it is considered appropriate, and to publish the statement in whatever manner considered appropriate. Subclause (5) imposes the procedure in clause 24 on the statement.

Clause 24: Consultation and Parliamentary procedure

- 82 Subclause (1) sets out that the Secretary of State may only issue guidance where the conditions described in Subclauses (2) and (3) have been met.
- 83 Subclause (2) states that the first condition is that the Secretary of State, before issuing the statement carries out such consultation on a draft of the statement as the Secretary of State considers appropriate; and (b) makes any changes to the draft that the Secretary of State considers necessary in view of the consultation responses.
- 84 Subclause (3) provides that the second condition is that after the first condition has been complied with, the Secretary of State (a) lays a draft of the statement before Parliament, and (b) the draft is approved by a resolution of each House of Parliament.
- 85 Subclause (4) provides that consultation undertaken before the commencement of subclause (2) is as effective for the purposes of that subclause as a consultation taking place after its commencement.
- 86 Subclause (5) provides that the Clause 24 procedure also applies to revised statements, unless the Secretary of State considers that the revisions are insubstantial.

Appeal against decision

Clause 25: Appeal of decision

- 87 Clause 25 sets out how an applicant may appeal the Secretary of State's decision to the First-tier Tribunal.

Part 4: Enforcement

Enforcement provision relating only to Part 3

Clause 26: Warning notices

- 88 Clause 26 provides that the Secretary of State may give to a person as defined in subclauses (5) to (7) a written “warning notice” that they are considering taking the action of issuing a restriction notice (as set out in Clause 27). Subclauses (3) and (4) allow the warning notice to require compliance with conditions which are specified for the purpose of securing or improving the financial stability of the relevant business or for facilitating the availability of technical resources required for the sound and proper management of the relevant business. Where conditions are imposed, the warning notice must explain the effect of failing to comply with them.
- 89 Subclauses (5) to (7) set out the three conditions for the imposition of a warning notice. These conditions are that the person on whom a notice is served must have made a qualifying acquisition contrary to clause 15(1) and that the person continues to hold the relevant interest, shares or rights set out in one of the three cases set out in clause 16.

Clause 27: Restriction notices

- 90 Clause 27 enables the Secretary of State to give a restriction notice to a person that has contravened Clause 15 “Restriction on making qualifying acquisitions”. The Clause applies if the Secretary of State has given the person a warning notice in respect of the qualifying acquisition and meets the first, second and third conditions stated in clause 26.
- 91 Subclauses (2) and (3) list the restrictions on interests, payment, shares or voting power that the Secretary of State may direct in a restriction notice. Subclause (4) states that such restrictions can take effect: (a) immediately, or (b) on a date specified in the notice.
- 92 Under subclause (5), the Secretary of State must consider what action the person has taken in relation to any condition imposed on them by way of a warning notice.

Clause 28: Appeals against warning notices or restriction notices

- 93 Clause 28 sets out how a person subject to a warning notice or a restriction notice may appeal the Secretary of State’s decision to the First-tier Tribunal.

Clause 29: Contravention of restrictions etc

- 94 This clause sets out that contravention of the requirements set out in Part 3 is an offence, specifically contravention of restrictions on making qualifying acquisitions (clause (15)(1)), conditions specified in a warning notice (clause (26)(3)), or a direction contained in a restriction notice (clause (27)).
- 95 Subclause (4) sets out that a person who commits an offence under this clause is liable (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months and/or a fine; (b) on

summary conviction in Scotland, to imprisonment term not exceeding 12 months and/or a fine not exceeding the statutory maximum; (c) on summary conviction in Northern Ireland, to imprisonment term not exceeding 6 months and/or a fine not exceeding the statutory maximum, or; (d) if convicted on indictment, to imprisonment for a term not exceeding 2 years and/or a fine.

- 96 Subclause (5) states that the term of 12 months in Subclause (2)(a) is to read as six months until paragraph 24(2) of Schedule 22 to the Sentencing Act comes into force.

Offences: general

Clause 30: Making of false statements etc

- 97 Subclause (1) specifies that it is an offence for a person to make a statement they know to be false or misleading in relation to the following clauses:

- a) in responding to a request for information under the power to require information (clause 9), a request for further information under the duty to report incidents (clause 10(4)), and a request for information under the regulations for general information requirements (clause 12);
- b) in an application for consent to a qualifying acquisition (clause 15);
- c) in responding to a request for the further information in relation to an application for consent to a qualifying application (clause 20);
- d) in responding to a notice under the power to obtain information from third parties (clause 21); or
- e) in making any other statement to the Secretary of State in connection with any of their functions under this Act.

- 98 Subclause (2) sets out that a person who commits an offence under this clause is liable: (a) on summary conviction in England and Wales, to imprisonment for term not exceeding 12 months and/or a fine; (b) on summary conviction in Scotland, to imprisonment for term not exceeding 12 months and/or a fine not exceeding the statutory maximum; (c) on summary conviction in Northern Ireland, to imprisonment for term not exceeding six months and/or a fine not exceeding the statutory maximum; or (d) if convicted on indictment, to imprisonment for a term not exceeding 2 years and/or a fine.

- 99 Subclause (3) states that the term of 12 months in Subclause (2)(a) is to read as six months until paragraph 24(2) of Schedule 22 to the Sentencing Act comes into force.

Clause 31: Offences under regulations

- 100 Clause 31 sets out how offences under regulations in clause 8 (corresponding powers to make regulations) and clause 12 (information:

general requirements) would proceed and the maximum sentences on conviction.

Clause 32: Proceedings for offences

101 Clause 32 states the consents required for prosecution of an offence under this Bill, including those contained in regulations.

102 Clause 32 states that proceedings for offences in England and Wales can only be brought forward with the consent of either the Secretary of State or the Director of Public Prosecutions. In Northern Ireland offence proceedings can only be brought forward with the consent of either the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

Clause 33: Liability of officers of entities

103 Clause 33 sets out that where an offence committed by a body corporate has been committed with the consent or connivance (subclause (1)(a); or is attributable to neglect (subclause (1)(b) of an officer of the body corporate; then that officer is considered to commit the offence as well as the body corporate and is liable to be proceeded against and dealt with accordingly. "Officer" is defined in Subclause (2) and (3). Subclause (4) makes similar provision for Scottish partnerships.

Civil Sanctions

Clause 34: Discretionary requirements

104 Clause 34 sets out how the Secretary of State may impose a discretionary requirement where a person has committed a relevant offence. Three types of "Discretionary requirement" are defined in Subclause (2) as being a variable monetary penalty, a compliance requirement, or a restoration requirement.

105 Subclause (1)(a) sets out that the Secretary of State may only impose a discretionary requirement if satisfied beyond reasonable doubt that the person has committed a relevant offence.

106 Subclause (4) limits the variable monetary penalty amount to not exceed £10,000,000. Subclause (5) makes clear that a discretionary requirement can only be imposed once in relation to any individual act or omission.

Clause 35: Restriction on criminal liability where discretionary requirement imposed

107 Clause 35 ensures that a person on whom a discretionary requirement is imposed may not also be convicted of an offence in respect of the same relevant act or omission. Subclause (2) provides an exemption to this where the discretionary requirement was a compliance requirement or a restoration requirement (but not a variable monetary penalty) and that requirement has not been complied with.

Clause 36: Enforcement undertakings

108 Clause 36 provides for enforcement undertakings where a person has committed an offence. Where such a person offers an enforcement undertaking to the Secretary of State, and the Secretary of State agrees to accept the undertaking (subclause (1)), then so long as the undertaking has been complied with, the person can neither be convicted of an offence or subject to a discretionary requirement (subclause (2)). An enforcement undertaking is an undertaking to take an action within a specified period. Such action may be: i) for the purpose of securing that the offence does not continue to recur; ii) to secure that the position is so far as possible restored to what it would have been if the offence had not occurred; iii) to benefit any person affected by the offences (including financially) or; iv) of any other description specified in regulations (subclauses (3)-(5)). Partial compliance with an enforcement undertaking must be taken into account in deciding on further enforcement action (subclause (6))

Clause 37: Further provision about discretionary requirements and enforcement undertakings

109 Clause 37 states that Schedule 2 contains further provisions on discretionary requirements and enforcement undertakings, including procedure, penalties, compliance certificates and appeals.

Guidance: criminal and civil sanctions

Clause 38: Guidance as to enforcement of offences

110 Clause 38 states that the Secretary of State must publish guidance on the sanctions, the action that the Secretary of State may take to enforce offences under the Bill and the circumstances in which the Secretary of State is likely to take such action.

111 Under subclause (2), the Secretary of State must from time to time review that guidance, and under subclause (3) must consult such persons as they consider appropriate before publishing guidance or revised guidance.

Clause 39: Guidance as to use of civil sanctions

112 Clause 39 obliges the Secretary of State to publish guidance about the Secretary of State's use of discretionary requirements and enforcement undertakings.

113 Subclause (2) sets out what information needs to be included in the guidance for each type of discretionary requirement.

Part 5: General

Financial Assistance

Clause 40: Financial assistance for resilience and continuity purposes

114 Clause 40 enables the Secretary of State to provide financial assistance in any form, with terms and conditions, for the purpose of maintaining or improving downstream oil sector resilience or for the purpose of securing or maintaining continuity of supply of crude oil-based fuel. Subclause (4) lists the types of financial assistance that may be given.

Powers to amend thresholds

Clause 41: Power to amend thresholds

115 Clause 41 enables the Secretary of State to make regulations to vary the threshold amounts specified in clauses: 3(6); 8(6); 9(3); 10(2)(a) and (b); 12(3); and 17(1)(b).

Regulations

Clause 42: Regulations

- 116 Clause 42 sets out how a power to make regulations under this Bill may be exercised.
- 117 Subclause (2) states that the power to make regulations under this Bill is exercisable by the Secretary of State by Statutory instrument.
- 118 Subclause (3) states that, other than for the purpose of commencement under clause 44(2) and regulations under those clauses mentioned in subclause (4), statutory instruments are to be subject to annulment in pursuance of a resolution of either House of Parliament.
- 119 Subclause (4) state that a statutory instrument under clauses 8; 12; 36(3)(b) and 41 cannot be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament.

Interpretation and final provisions

Clause 43: Interpretation

120 Clauses 43 includes definitions of terms used in this Bill.

Clause 44: Extent, commencement and short title

- 121 Subclause (1) states that the Bill extends to England, Wales, Scotland and Northern Ireland;
- 122 Subclause (2) states that the Bill, apart from clauses 42, 43 and 44, comes into force the given day that the Secretary of State will by regulations

appoint.

- 123 Subclause (3) states that regulations under this clause may be appointed for different days for different purposes and that they may be done for transitional, transitory and saving provisions.
- 124 Subclause (4) states that the Bill may be referred to as the Downstream Oil Resilience Act 2021, subject to Parliamentary approval.

Schedules

Schedule 1

Acquisitions: Supplementary

Shares, rights and interests held “indirectly”

- 125 Paragraph 2(1) defines “indirectly” in relation to holding a share, right or interest: if the person has a majority stake and that entity - (2)(a) holds the share, right or interest, or (2)(b) is part of a chain of entities—(i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and (ii) the last of which holds the share, right or interest.
- 126 Paragraph 2(2) defines “majority stake” for voting rights, rights of board appointment and removal, and influence.

Calculating shareholdings

- 127 Paragraph 3(1) sets out that holding “more than 25% of the shares” is to holding shares comprised in the issued share capital of that company of a nominal value exceeding (in aggregate) 25% of that share capital.
- 128 Paragraph 3(2) states that for situations in which a company that does not have a share capital, a reference to holding shares in that company is to holding a right to share in the capital or, as the case may be, profits of that company. In which case a reference to holding “more than 25% of the shares” in that company is to holding a right or rights to share in more than 25% of the capital or, as the case may be, profits of that company.

Voting rights

- 129 Paragraphs 4 and 5 set out how voting rights are classified and how those apply where an entity does not have general meetings.

Joint interests

- 130 Paragraph 6 sets out that if two or more persons each hold a share, right or interest jointly, each of them is treated as holding that share, right or interest.

Joint arrangements

- 131 Paragraph 7 sets out that where a joint arrangement exists, the persons involved will be treated as holding the combined shares, rights or interests.

132 Paragraph 7(2) defines a “joint arrangement” as an arrangement between the holders of shares, rights or interests that they will exercise all or substantially all the rights conferred by their respective shares, rights or interests jointly in a way that is pre-determined by the arrangement.

Shares and interests held by nominees

133 Paragraph 8 states that a share or interest held by a person as nominee for another is to be treated as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise

134 Paragraph 9 sets out that where a person controls a right, the right is to be treated for the purposes of this Bill as held by that person (and not by the person who in fact holds the right, unless that person also controls it).

135 Paragraph 9(2) defines “controls”.

Rights exercisable only in certain circumstances etc

136 Paragraph 10 sets out the circumstances in which rights exercisable only in certain circumstances may be taken into account.

Rights attached to shares held by way of security

137 Paragraph 11 sets out that rights attached to shares held by way of security provided by a person are to be treated as held by that person.

Meaning of “arrangement”

138 Paragraph 12(1) defines “arrangement”.

Schedule 2

Civil Sanctions

Part I - Discretionary requirements

Notice of Intent

139 Paragraph 1 sets out the process and information that must be provided for the Secretary of State to issue a notice of intent.

Final notice

140 Paragraph 2 sets out the process and information that must be provided for the Secretary of State to issue a final notice.

Non-compliance penalty

141 Paragraph 3 allows the Secretary of State to impose a monetary penalty (a “non-compliance penalty”) on a person who fails to comply with a compliance requirement or a restoration requirement. The amount of the penalty is to be determined by the Secretary of State and must not exceed £10,000,000.

Appeal against discretionary requirement or non-compliance penalty

142 Paragraph 4 lists the grounds for which a person, on whom a discretionary requirement is imposed, can appeal to the First-tier Tribunal against the decision to impose it.

143 Paragraph 5 lists the grounds for which a person served with a notice imposing a non-compliance penalty may appeal to the Tribunal against the notice.

144 Paragraph 6 lists the possible outcomes of appealing to the Tribunal.

Recovery of financial penalties

145 Paragraph 7 states that a variable monetary penalty and any interest payable on it, or a non-compliance penalty are recoverable summarily (or, in Scotland, recoverable) as a civil debt (but this does not affect any other method of recovery).

Payment of penalties into Consolidated Fund

146 Paragraph 8 states that the Secretary of State must pay a variable

monetary penalty and any interest payable on it, or a non-compliance penalty into the Consolidated Fund.

Part 2 - Enforcement undertakings

Procedure

147 Paragraph 9 sets out the procedure for entering into enforcement undertakings.

Variation of terms

148 Paragraph 10 states that the terms of an enforcement undertaking may be varied if both parties agree in writing.

Compliance certificates

149 Paragraph 11 sets out the process whereby a person can apply for, and the Secretary of State can issue, a “compliance certificate” as confirmation that an enforcement undertaking has been complied with.

Inaccurate, incomplete or misleading information

150 Paragraph 12 states that where the Secretary of State is satisfied that a person who has given an enforcement undertaking has provided inaccurate, misleading or incomplete information in relation to the undertaking, the Secretary of State may treat the person as having failed to comply with the undertaking. In such circumstances the Secretary of State must revoke any compliance certificate.

Appeals

151 Paragraph 13 sets out the grounds for appeal to the Tribunal against a decision of the Secretary of State to refuse an application for a compliance certificate or, in reliance on paragraph 12, to treat the person as having failed to comply with an enforcement undertaking.

152 Paragraph 13(2) details the grounds for appeal.

153 Paragraph 13(3) details the possible outcomes of the Tribunal.

Commencement

- 1 Clause 44(2) sets out that the Bill will come into force by way of commencement regulations and Clause 44(3) allows these to appoint different days for different purposes and make transitional, transitory and saving provision.

Financial implications of the Bill

- 2 Any future expenditure or financial transactions incurred by Secretary of State will have a fiscal impact. The Bill does not require a ways and means resolution but does require a money resolution as the new legislation imposes a potential liability on public expenditure.

Compatibility with the European Convention on Human Rights

- 3 BEIS considers that the provisions of the draft Bill are compatible with the Convention Rights set out in the Human Rights Act 1998.

Related documents

- 4 The following documents are relevant to the Bill and can be read at the stated locations:
 - a) Downstream Oil Supply Resilience Consultation page, hosting the consultation document, consultation stage Impact Assessment and Government response:
<https://www.gov.uk/government/consultations/downstream-oil-supply-resilience>

Annex A - Territorial extent and application in the United Kingdom

The table below sets out the extent and application of each Part of the Bill.⁴

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within competence of Senedd Cymru?	Would corresponding provision be within competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Part 1: Clauses 1-7	Yes	Yes	Yes	Yes	No	No	Yes	Yes (NI)
Part 2: Clauses 8-25	Yes	Yes	Yes	Yes	No	No	Yes	Yes (NI)
Part 3: Clauses 26-42	Yes	Yes	Yes	Yes	No	No	Yes	Yes (NI)
Part 4: Clauses 43-56	Yes	Yes	Yes	Yes	No	No	Yes	Yes (NI)

⁴ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

CCS0421444980
978-1-5286-2585-2