



# Business, Energy and Industrial Strategy Committee

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Rt Hon Anne-Marie Trevelyan MP  
Minister for Business, Energy and Clean Growth  
Department for Business, Energy and Industrial Strategy  
1 Victoria Street  
London  
SW1H 0ET

15 July 2021

Dear Anne-Marie,

## **Draft Downstream Oil Resilience Bill**

Thank you for inviting my Committee to conduct pre-legislative scrutiny on the draft Downstream Oil Resilience Bill, and for the collaborative and helpful approach of your officials.

In our preliminary examination of the draft bill, a number of technical elements are of interest. To aid our understanding of the draft Bill, I would be grateful if you could answer the questions set out below.

1. The definition of downstream oil sector activity in clause 1 requires activity to be carried on in the United Kingdom in the course of a business. A number of the draft Bill's provisions, however, operate by reference to the business owner which is defined in clause 1 in a form that is broad enough to include overseas interests. Please clarify the intended extra-territorial reach of the draft Bill in relation to foreign interests and, in particular, how effectively that reach is expected to be capable of being enforced.
2. Clause 3(1) is drafted in broad terms. For example, the phrase: "may ... direct a person... to do anything in relation to the person's relevant activities or assets". Please share your understanding of the effect of section 3 of the Human Rights Act 1998 in imposing implied parameters on clause 3(1) insofar as it does, or could, relate to expropriatory actions that would engage Article 1, Protocol 1 of the ECHR.
3. Clause 7 creates an offence of failing to comply with a resilience direction. It includes a qualification so that it is committed only by failure to comply "without reasonable excuse". Please outline what range of activity you believe this qualification is, and is not, intended to cover. Please also outline whether you intend to provide great clarity on this matter on the face of the Bill in its final form.
4. Clause 7(2) sets out penalties for individuals failing to comply with the draft Bill's provisions, and rather than the corporations of which those individuals are a part. Please outline your assessment of how this proposed legislation would ensure DSO corporations themselves (rather than individuals) are properly accountable.
5. Please outline in detail the intended relationship between resilience directions under clause 3 and resilience regulations under clause 8.
6. Clause 9 provides the Secretary of State with a power to require information about downstream oil activities and assets, with a qualification in subsection (2) that the information may be required only for purposes of maintaining or improving resilience. Please outline to which uses information can, and cannot, be put, once supplied for legitimate reasons as set out in subsection (2). Please also outline whether you intend to provide greater clarity on this matter on the face of the draft Bill in its final form.



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7. The acquisition consent guidance statement under clause 23 is subject to affirmative resolution scrutiny under clause 24. Given the complicated and politically and commercially sensitive issues, what is the Government's assessment of the case for statements under clause 24 being subject to the super-affirmative procedure.
8. Clause 25 provides for an appeal to the First-tier Tribunal against refusal of applications for consent to acquisition. Please outline your rationale for directing these appeals to the First-tier Tribunal, rather than the High Court. Please also outline your assessment of the likelihood of such appeals inevitably progressing to the High Court in any case.
9. Please outline your rationale for the £10 million maximum penalty set out in clause 34(4).
10. Please outline your assessment of whether Parliamentary scrutiny of any financial assistance provided to the DSO under the draft Bill's provisions would be appropriate. If you do deem such scrutiny to be appropriate, please also outline how this might be incorporated on the face of the Bill in its final form.

I would be grateful for a response on these questions by 22 July.

I would also like to reiterate the point I raised at the close of our recent evidence session regarding the delegated powers memo. Without this document we will be unable to effectively scrutinise the draft Bill. A Parliamentary Committee would usually expect a Department to have these documents prepared *before* it initiated the pre-legislative scrutiny process. Otherwise, the Committee's important work programme may become held-up. I trust you understand these pressures, and therefore our expectation to receive the memo by 1<sup>st</sup> August.

**DARREN JONES MP**

**CHAIR, BUSINESS, ENERGY AND INDUSTRIAL STRATEGY COMMITTEE**