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Dear Darren,

Thank you for writing to me on resilience in the Downstream Oil sector following the recent events in the last couple of weeks. I would like to also thank you for the work the Committee is doing to ensure that the provision in the Draft Bill is fit for purpose through the Pre-Legislative Scrutiny.

You have rightly noted that the recent event has highlighted the importance of having a resilient sector that can ensure continuity of fuel supplies. Indeed, ensuring that the United Kingdom has a secure and reliable energy supply remains one of my Department's top priorities. That is why my Department worked very hard with the industry to respond to the disruption to the availability of fuels at forecourts and activated several contingency measures to assist the industry with returning forecourt stock levels to normal. The most significant of these have been the deployment of Military drivers and road tankers through my Department's long-established programmes. Industry have been working constructively with officials to ensure these interventions have the best impact to ensure continuity of supply. I am happy to inform you that demand levels have now stabilised and stock levels at forecourts have returned to levels higher than they were in early September as a result of collaborative working between BEIS and the Industry.

You asked for my reflections on the measures in the draft Bill in the context of recent events. The first thing to emphasise is that there was no overall shortage of fuel at any point over the past few weeks and that refineries and import terminals continued to have normal stock levels. The shortages at forecourts were driven by an increased demand from the public in response to media reporting. The underlying issue was that the sector is seeing the same shortage of HGV drivers as the rest of the haulage sector both in the UK and across Europe. Furthermore, as petrol and diesel are inherently hazardous to handle, they cannot be delivered by the generality of HGV drivers.

The powers in the Downstream Oil Bill are predominantly focused on encouraging industry to build resilience rather than respond to an emergency and are not primarily designed to provide the Government with additional powers to respond to an emergency. Rather, the measures will allow us to identify fuel supply risks and support industry in ensuring downstream oil sector resilience; ahead of any potential crisis and within the structure of the fuel supply market. For example, the information power proposed in the Bill would allow us to have a clearer picture of the situation in

the sector and emerging risks beforehand and we could have used the direction powers to ensure that there was no disruption to supply by asking suppliers to take certain actions in relation to their downstream oil activities.

While the availability of fuel at forecourts has returned to normal levels Government support such as Military drivers is still deployed and therefore a full assessment of the Government and industry response and the implications for the draft Bill cannot yet be made until we have rescinded all the response measures which we put in place to address the issue. This will be work my Department will pursue once these measures have been successfully withdrawn.

With regard to your specific questions, more detailed answers are provided in Annex A.

I hope this information provided is helpful to the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kwasi Kwarteng', is centered on the page.

RT HON KWASI KWARTENG MP
Secretary of State for Business, Energy and Industrial Strategy

Annex A

Assessment of the Government's general response

My Department is in regular contact with the major hauliers in the fuel supply sector. While these companies had reported that they were seeing a general shortage of drivers, they had not indicated any inability to meet demand.

Media reports on 23 September, covered leaked comments made by one major supplier on their issues with the haulier who they use for forecourt deliveries. These reports resulted in a marked increase in consumer purchasing behaviour which became visible on Friday 24 September, with 181% of normal demand of fuel being bought.

To ensure an effective and evidence-based response, BEIS obtains daily data on wetstock (fuel in tanks at forecourts) levels, sales, and grade outs for around sixty percent of forecourts across Great Britain. This uses data on forecourt wetstock levels from two large wetstock management firms' remote monitoring systems. BEIS uses this data routinely to provide a strategic picture of stock levels across the country. Earlier this year analysts in my Department had also developed a process for accessing a high-level, hourly view of regional stock levels. This data allowed BEIS to quickly assess the severity of the issue and stand up an Emergency Response Team and brief Ministers and colleagues across Government.

Ministers and officials engaged intensively with industry over the weekend of 25-26 September to understand the position and by Monday 27 September had activated the Downstream Oil Protocol and the Reserve Tanker Fleet and had agreed with Defence Ministers to activate Operation ESCALIN to make military drivers available to hauliers.

BEIS has also worked with other Government departments particularly the Home Office and Department for Transport. For example, in response to a request from hauliers, the Government announced on 25 September a concession for non-visa nationals coming to work in the UK as HGV fuel tanker drivers to seek permission to enter the UK at the border. And the DVLA have put in place specific and expediated process to process new licence and licence renewal applications for fuel tanker drivers.

Ministers and officials have continued to proactively engage with the industry to manage the fuel shortage issue. Through these meetings, industry have provided assurance that there is no issue with stock levels or operation at terminals and there has been an increase in the volume of fuel being delivered to forecourts.

Our role in this response has been to support the industry response to the increased demand. To that end, Government support has included the deployment of 222 Military drivers and 37 road tankers from the BEIS Reserve Tanker Fleet. This has provided the hauliers with additional capacity to deploy in the most efficient way through their sophisticated logistics operations to maximise their ability to deliver fuel where it is needed.

As of 18 October all regions have been restored to stock levels within normal range (an average stock level of above 40%).

Limitations of existing powers

The contingency measures currently in place generally do not rely on specific sectoral powers. The one exception is the Downstream Oil Protocol, which relies on the Competition Act 1998 (Public Policy Exclusion) Order 2012 (SI 2012/710).

This Order exempts Protocol Parties, that is who are signatories of the above-named protocol, from the Competition Act 1998. The protocol is regulated by the Competition and Markets Authority and may only be activated by the Secretary of State for Business, Energy and Industrial Strategy.

Currently, there is no legal requirement or obligation for UK downstream oil companies operating to supply data or information to HMG for the purposes of understanding the risks on infrastructure, supply or demand. Existing information reported to BEIS on companies' capabilities and risks is through voluntary arrangements, is often incomplete, and the quality varies which carries the risk that industry engagement could cease at any time and are not consistent. The information power proposed under the DSOR Bill will allow Government to control the quality of information available and imposes a statutory duty on the Industry to report any incidents that might cause disruption.

For example, and mentioned in the previous section, BP was under no obligation to – and therefore did not – report to BEIS, the Department responsible for energy resilience, the issues which it faced in making deliveries to forecourts, which were leaked to the media. With the powers in the Bill, they would have a duty to report the situation and would have given the Government sufficient time to plan for the disruption which might include the direction powers in exceptional circumstances.

Applicability of powers in the draft Downstream oil Resilience Bill.

The powers in the Downstream Oil Bill are predominantly focused on encouraging industry to build resilience rather than respond to an emergency. However, the information power, would give Government an insight to emerging risks or the need for more effective contingency planning. For example, under the powers in the Bill, the major suppliers would have been obliged to report on their issues with the hauliers' ability to maintain supply to forecourts under their statutory duties. This information would have allowed the Department to put measures in place to avoid the situation in the first instance.

The draft legislation, therefore, makes provision to require two categories of reporting: routine and incident.

Routine reporting: to ensure that government receives regular, reliable and consistent information from the sector to support monitoring of resilience. To establish this regime, will require a statutory instrument.

Incident reporting: these powers place a duty on relevant persons to report any incident that threatens either continuity of fuel supply or downstream oil sector resilience. No further regulation is required as the clauses provide for the Secretary of State to specify the information required, timing and format.

Once the power is introduced, government would be able to require industry to provide regular data and report incidents to ensure Government can identify potential and actual disruptions early and target contingency measures more effectively.

Enacting the Downstream Oil Protocol

My decision to activate the Downstream Oil Protocol was due to the severe strain being experienced by the sector as a result of increased demand and the evidence from the data on the availability of fuel to end-users. The Downstream Oil Industry Protocol was designed to provide protection under competition law and facilitate the sharing of information across the sector which would normally be commercially sensitive. As well as requesting information on hauliers' road fuel delivery profile, government will request information including: supply volumes available at refineries and terminals, demand volumes from wholesalers/retailers/hauliers and how that fuel is conveyed.

The activation of the Downstream Oil Protocol has enabled us to share successfully industry wide information on the supply and demand of fuel and has allowed us to work with the industry to identify some more detailed issues and solutions in order to target our support for the areas that they need most. It has allowed us to request information on hauliers' road fuel delivery profile, and supply volumes available at refineries and terminals, demand volumes from wholesalers/retailers/hauliers and how that fuel is conveyed, etc which has provided a clearer picture on the situation. Once this situation has been fully dealt with, my officials will assess the effectiveness of our response and the sector's response to understand if there are any gaps and what more government can do to respond better to future situation like this.

Assessment of the sector's response

The industry response to increase supply was rapid with increased numbers of deliveries to forecourts within the first 1-2 days of increased demand. This immediate response has been through the hard work and dedication of the fuel delivery drivers who have worked overtime and deferred holiday to make these deliveries, for which they deserve our thanks.

This response was less immediately effective in London and the South-East as this appears to have been where the driver shortage was most acute. However, forecourts stock levels have now returned to levels in the normal range.

Sector response to response measures

Industry stakeholders have been supportive of the measures that the Department have taken to intervene to ensure security of supply. Major companies and stakeholders have been cooperative in providing data in an effective manner and have worked collaboratively with my officials to minimise the impact of the disruption. Hauliers have also taken advantage of the BEIS Reserve Tanker Fleet and Military drivers to boost their supply capability. It should be noted that they will make a significant contribution to the cost of these measures.

Our focus now with industry is to ensure that they are recruiting enough drivers to maintain a resilient fuel supply for the longer term. This will allow us to withdraw these support measures and return to normal market conditions. This engagement is still in progress.

Representations about the draft Bill

While our stakeholders have not raised anything about the draft Bill in the past few weeks, we will discuss the lessons learned from these events with them and invite feedback on how we can ensure resilience through the powers in the Bill.