

Background

The UK Petroleum Industry Association (UKPIA) represents eight oil refining, distribution and marketing companies that operate the six major oil refineries in the UK and source over 85% of the transport fuels used. UKPIA members also own and operate multiple oil terminals and oil pipelines that fall under the scope of the Downstream Oil Resilience Bill (in this response the DSOR Bill or the Bill), as well as around 1,250 of the UK's 8,000+ filling stations in the UK.

The downstream sector supplies 96% of energy for transport, which is the focus of this Bill, but also provides many other vital products involved in diverse uses such as home heating, manufacture of chemicals, road building, anodes for batteries and others that underpin the economy.¹ The sector itself supports over £21 billion in GDP and 300,000 jobs.²

Given the extent to which our members' operations and infrastructure is captured in the scope of the Bill, UKPIA wishes to engage with the BEIS Committee Inquiry (as well as directly with BEIS itself) to ensure that the Bill supports the functioning of the UK downstream oil market so that, as BEIS's ministerial foreword notes, it "is efficient, flexible, and effective in ensuring continuity of fuel supply."³ As with any new legislation, it is important that the Bill is as clear and focussed on meeting its core objectives as possible. UKPIA welcomes the opportunity from the Committee to engage in its Inquiry.

Main Points:

- The powers in the DSOR Bill are in some cases too broad and, at worst, have the potential to negatively influence industry decisions to invest in the UK – this applies both to investments to maintain supplies today, but may also influence decisions for decarbonisation related investment.
- The Bill, as drafted, is too broad in nature for the industry to fully understand its implications for their operations. While BEIS plans to run workshops on the Bill and has indicated secondary legislation will be issued – this limits the ability to fully assess the implications of the Bill at this time.
- The sector relies on fair and strong competition, which has for decades supported the efficient delivery of affordable fuels and a market that is able to mitigate the majority of resilience issues.
- There appears to be crossover and duplication with existing legislation (e.g., the Energy Act 1976 and the National Security and Investment Act 2021) that either needs to be clarified in terms of which powers would be used when or, as with the control powers, offers the opportunity for streamlining of the requirements on businesses.

¹ BEIS, Energy White Paper: Powering our Net Zero Future. p170 (2020).

² Oxford Economics for UKPIA, The Economic Contribution of The UK Downstream Oil Sector. p7 (2019).

³ BEIS Ministerial Foreword, Downstream Oil Resilience Draft Bill. p4 (2021)

1. Is the Government's policy on fuel resilience appropriate and effective?

As noted in BEIS's guidance "Preparing for and responding to energy emergencies", "technical incidents in the downstream oil sector occur sometimes without any discernible impact on supplies. These are managed and resolved by the companies involved."⁴ Industry-led incident response is the core of fuel resilience in the UK as, despite large numbers of regulations which apply to the sector - as well as close and effective engagement with safety and environmental regulators - the downstream oil sector lacks a central authority or mechanism to manage supply (as is the case for other utilities e.g., OFGEM or OFWAT).

Within the industry-led framework, BEIS already has powers it can exercise as well as established and proven means of working with industry (as demonstrated recently in the response to the combination of disruption from Covid-19 and Brexit). It is important to note, however, that to date BEIS has chosen not to exercise some of its powers, most notably: the Downstream Oil Protocol (a Competition Act exemption to share information, which has been used only once for a matter of hours), the National Emergency Plan for Fuels, and the powers under the Energy Act 1976, which are extensive.^{5,6}

BEIS's own policy background to the Bill notes "in the main, the sector is efficient, flexible and effective in ensuring the continuity of supply"⁷ and the last significant national shortage of fuel was due to the threatened driver strikes of 2012 when a short-term spike in demand for road fuels in response to the threatened strike was experienced. Beyond that example, the large fuel price protests of 2000 resulted in the only major shortage of fuels in the UK for several decades and saw over 3,000 petrol stations experience shortages.⁸

While the two examples above resulted in physical shortages at pumps, there have been many other examples of issues that have not. In such cases, the industry has demonstrated its resilience and flexibility by adapting its infrastructure and processes to ensure that supply is quickly restored in affected areas and the public remained unaffected by the incidents. Examples include, but are not restricted to:

- The Buncefield Incident (2005);
- The failure of Petroplus (2012);
- Murco's withdrawal from refining at Milford Haven (2014);
- Various pipeline outages;
- Periods of industrial activity by tanker drivers and refinery workers
- Major turnarounds and unplanned shutdowns at refineries.

⁴ BEIS, Preparing for and responding to energy emergencies (2013 and updated since) <https://www.gov.uk/guidance/preparing-for-and-responding-to-energy-emergencies>

⁵ BEIS, Summary of response tools in the National Emergency Plan for Fuel (2020) <https://www.gov.uk/government/publications/energy-emergency-plans-priority-fuel-allocation>

⁶ Energy Act 1976, <https://www.legislation.gov.uk/ukpga/1976/76/contents>

⁷ Downstream Oil Resilience Draft Bill. p46 (2021)

⁸ BBC news website, "Blair turns heat on oil industry", (2000) <http://news.bbc.co.uk/1/hi/uk/921903.stm>

Given the lack of impact on the consumer over the past 20 years, as well as the choice by BEIS not to make use of its existing (broad) powers, it can perhaps be concluded that the existing policy of working with industry without the need for a regulator or further powers has proven effective at managing continuity of supply of fuels in the UK. UKPIA therefore believes that the case for the Bill requires further clarification and the nature of, extent and precise conditions under which the powers contained therein would be applied would benefit from much more precise definition.

2. How well does the draft Bill, as currently drafted, meet the Government's stated policy intentions?

Given the current drafting of the Bill, BEIS will take significant and broad powers that will increase BEIS's ability to intervene in the market. However, given the Downstream oil (DSO) sector relies on a free and competitive market, there is a risk that the potential use of the powers and, separately, the actual use made of them could deter future investment, which at worst could run counter to BEIS' objective of ensuring "reliable, affordable and clean" energy supplies, particularly in pursuit of the Net-Zero target.

Regarding the proposals in the DSOR Bill, and as will be noted later in this response, there is insufficient clarity at this point to fully understand how the new powers BEIS is proposing interplay with existing powers and policy. It is understood that BEIS intends to clarify these positions in workshops to be held in summer 2021 as well as, potentially, in secondary legislation which will be subject to the usual scrutiny and consultation procedures.

On the various powers that are being sought in the Bill, more information is required to fully understand their impact on business but also the Bill's ability to meet Government's stated policy intentions:

Directions for Resilience or Continuity Purposes

The power is open-ended and presents a possible concern to incumbent and new entrant companies so large that it may quell the market – both in terms of investment in the existing industry for margin improvement or strategic reasons, and acquisition investment of UK assets.

The current draft Bill states "The Secretary of State may....direct a person...to do anything in relation to the person's relevant activities or assets" (Part 2, Clause 3.1), which certainly includes within its ambit the powers that BEIS will want, in order to exert influence in the market. However, the scope of that power is so broad that companies could view future UK investment as a higher risk given BEIS's ability to direct more or less anything in future – which would be counter to the policy intention. There is a significant risk that this power could create market distortion both directly (by forcing a company to do something that is not commercially viable) and/or indirectly (through the fettering of investment as per above).

Information

UKPIA understands BEIS's objective to more easily collect information from industry and considers that the powers can deliver a mandatory reporting requirement. The intent for "notifiable incident" reporting is relatively clear in the Bill, although there remain issues

of detail to clarify (most importantly that this is limited to potential or actual events which are likely to have material impacts, frequency of reporting, precisely which incidents qualify, ensuring that reporting requirements to BEIS and other bodies such as the HSE and Environment Authority do not unnecessarily impede management of the incident itself etc.). However, the intended use of “information at specified intervals” (Part 2, Clause 12.1) is far less clear – will this power be used regularly by BEIS or even become a business-as-usual requirement?

Control power

The control power would give the Secretary of State a power of veto for certain acquisitions which is the intent, however, clarity is yet to be given on how BEIS will assess the financial stability or technical capability of an acquirer and what conditions might be imposed in this regard to ensure that such financial stability/technical capability remains post acquisition. There is also concern that this power crosses over significantly with other powers (see Q3 below).

Spending power

As with the direction powers, UKPIA has concerns regarding the open-endedness of the spending power and its intended scope for use. Although BEIS has confirmed that it sees it as a ‘backstop power’, there is no guarantee that this will remain the case in future, increasing the risk to companies of government intervening and potentially distorting the market.

3. Are the measures contained within the draft Downstream Oil Resilience Bill necessary and proportionate? Is the Bill necessary, given existing emergency powers under the Energy Act 1976 and the Civil Contingencies Act 2004?

UKPIA, in its response to the 2017 consultation noted that “Given the lack of need to use the Protocol, or existing emergency powers under the Energy Act, UKPIA members do not consider it necessary to introduce new legislation to manage supply disruption.” **While we accept that BEIS still believes there are shortcomings in its available levers to ensure resilience and continuity of supply, the powers proposed do not appear proportionate at this point – as noted in the Q2 response, further clarity of the intent and criteria for use of the powers may help mitigate this situation.**

Concerning each of the four main powers BEIS is seeking in the Bill, the spending power and the information power appear to be ‘new’ (although BEIS may collect information and allow companies to share information under the Downstream Oil Protocol, referenced above). However, both the power of direction and control powers do appear to have some overlap with existing law:

Power of Direction

The Energy Act 1976 is similarly broad in terms of the powers of the Secretary of State, notably section 2 “Reserve power to control by government directions” where the SoS can direct a person on the production and use and supply of a product. Similarly, section 6

“Bulk stocks of petroleum, etc.” enables the SoS to direct a person to hold stocks or make stocks.

In the background provided by the Explanatory Memorandum, BEIS notes that such powers are “restricted in scope...or only available for use during an emergency or crisis situation”⁹, which would indicate that the intent of the new powers is allow action in advance of such a crisis, however, this would appear to be an issue of timing as BEIS can already use powers in the Energy Act where “there exists or is imminent...an actual or threatened emergency affecting fuel.”¹⁰ Given BEIS intends to take ‘proactive’ measures to protect fuel supply, the industry will need to have a firm understanding of when and how this may occur to avoid reducing confidence on the part of companies to invest given the risk of government intervention as per Q2.

Control Power

The Explanatory Memorandum does not refer to the recently adopted National Security and Investment Act 2021 under which the sector will have a mandatory requirement to notify the BEIS Secretary of State of changes in acquisitions or voting rights (and others) under the Act.¹¹ These existing powers appear to be potentially duplicated by the new Control Power which also requires Secretary of State approval before changes can take place. While it is accepted that the notification procedures will assess against different criteria, we believe that there should be at least considerable streamlining potential between this Bill and the NSI Act.

- 4. How did the Government’s 2017 consultation on Fuel Resilience Measures inform the draft Downstream Oil Resilience Bill?**
- 5. Have the views of stakeholders been taken account of in the draft Downstream Oil Resilience Bill?**

As noted in the response to Q3, UKPIA was not convinced of the need for these powers given the existing capabilities of BEIS in existing legislation – principally the Energy Act 1976 - and the Downstream Oil Protocol. BEIS’s justification for the Bill itself remains broadly similar to that brought forward in the 2017 consultation, although there appears a greater concern driven by demand being expected to fall to meet Net-Zero targets. While this point of emphasis makes sense given the changes to government policy in recent years, given that demand for fuels (and other products) is likely to remain for some time to come it does appear a little premature as a strong justification for the Bill. There is now also reference to *the Integrated Review*, published in March of this year, but which makes little reference to domestic fuel supply issues with fuels with concerns seemingly more focussed on transition risks globally.

A major concern in UKPIA’s 2017 response (as well as follow up correspondence) was that there was not enough detail on how the various measures would be implemented – the open-endedness of direction and spending powers being a particular concern. BEIS has listened to these concerns,

⁹ BEIS, Downstream Oil Resilience Draft Bill. P49 (2021)

¹⁰ Energy Act 1976, Section 3.1.b <https://www.legislation.gov.uk/ukpga/1976/76/contents>

¹¹ National Security Infrastructure Act (2021) <https://www.legislation.gov.uk/ukpga/2021/25/contents/enacted>

however, there remain several points where greater clarity is required (see Q2). UKPIA hopes that most of these will be clarified in the BEIS workshops in the summer, and ultimately via updates to legislation (primary, secondary and guidance as appropriate).

The most significant change that has been made since 2017, is the removal of the proposal for “Industry Schemes” to mitigate BEIS’ resilience concerns, which UKPIA welcomes. Most notable among those proposals was the creation of a ‘Tanker Co.’ which would be paid for by industry to manage the Reserve Tanker Fleet (RTF) that BEIS argued was a flexible and cost-effective mitigation against many of the threats identified in the research project of 2014-15. UKPIA, along with most other industry respondents as we understand, was concerned by both the RTF and the industry schemes more broadly, which were unclearly defined and might have given rise to competition law concerns including forcing companies into non-commercial activities. While some of the remaining proposals retain those risks, UKPIA welcomes the removal of the industry schemes.

6. Are the measures contained within the draft Downstream Oil Resilience Bill appropriate, sensible and workable?

As noted in the response to Q2, UKPIA hopes to engage with BEIS to understand the intent, clarify requirements and define clear criteria across all of the measures to ensure that the Bill can successfully meet its objectives without placing undue burden on companies or making the UK a less attractive place to invest due to the risk of distortive market intervention. However, **at the time of writing, the Bill’s powers are too broadly defined and there is not enough detail on implementation to confidently conclude that the DSOR Bill is appropriate, proportionate and practical.**

7. Do stakeholders have any other concerns about the draft Bill?

Application of these powers

As noted in the answer to Q6, it is difficult to assess how workable these measures will be due to the relative lack of clear, detailed information contained in the Bill. As well as a technical assessment of the criteria in Q6, it is also important to ask if the addition of these powers would have made a positive difference in previous fuel supply/resilience incidents. This too is difficult to assess with the current drafting of the Bill (and without the supplementary secondary legislation and guidance that BEIS is expected to publish in time), however, given that the two largest supply issues of the past two decades have resulted from threatened or actual strike action, it may be worth assessing what these new powers might have done to have mitigated those issues.

Case 1: National action by hauliers

BEIS has indicated in its first briefing on the Bill (18th June) that it would not seek to force a company to increase pay or benefits in a contract dispute, but would, however, look to potentially direct nearby companies to ready their operations for additional supply.

In this case, the indication that companies will not be forced to sign a contract that is not commercial is reassuring, however, the mitigation approach would have its own risks and limitations even with the new powers.

- The information to the 3rd party regarding supply could potentially create a market distortion so the information would need to be very carefully shared, and the timing would also need to be considered in such a competitive sector (as well as alongside requirements to report for publicly listed companies).
- If as in 2000 and 2012, the dispute or union activity was national, then it may be that other geographically close sites would be just as affected by the threat and therefore direction powers moot or beyond what a directed person could achieve.

Future-proofing legislation

As has been noted earlier, the powers that the Bill would deliver the BEIS Secretary of State are extremely broad in their current draft. This creates a significant risk for companies in the future. While the intent of the Bill and use of the powers by BEIS may be for a ‘light touch’ approach (as referenced in the BEIS consultation response of 2018¹²), the powers themselves are extremely broad and – without further clarity – give potentially extreme powers to future Secretaries of State, which might not have the same views as the current Government which “is committed to ensuring a secure and reliable energy supply.”³ While some reassurance may be derived from the requirements on the Secretary of State for their use of such powers, as well as the appeal mechanism that is set out in the Bill, companies – many of which are international in their outlook – may look at the UK as a less attractive investment opportunity in future.

Meeting the challenge of Net-Zero

As an industry that is both a provider today of the largest proportion of the UK’s energy, and one that is taking early steps to contribute to the UK’s decarbonisation objectives by 2050, UKPIA and our members have some significant reservations about some of the broader powers in this Bill and the risk that they may reduce investment that is much needed for the future of the industry. Increasing the potential burden and investment in maintaining a potentially non-commercial back up supply chain may check this needed future investment at a pivotal time in the UK’s energy transition.

UKPIA agrees with BEIS’s assertion that “the UK market...is a mature market, facing both changing patterns of demand and high levels of competition”, however, its subsequent concerns about a fragmented supply chain, high utilisation rates and closures of uneconomic capacity do not necessarily mean that resilience is in an objectively worse situation than it has been in the past – and the specific level of resilience with which BEIS has a concern is still unclear. The sector has repeatedly demonstrated its ability both to adapt to new pressures – be they from the market or legislation – and continues to provide fuels efficiently, relatively cheaply (pre-tax¹³) and with increasing low carbon fuel content.¹⁴

¹² BEIS, Government Response to Consultation on Fuel Resilience Measures, p8 (2018) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/700357/FINAL - Government response - downstream oil supply resilience consultation.pdf

¹³ Fuels Europe, Breakdown of automotive prices, (May 2020) <https://www.fuelseurope.eu/knowledge/refining-in-europe/economics-of-refining/fuel-price-breakdown/>

¹⁴ DfT, Renewable fuel statistics 2019: Final report, (2020) GOV.UK <https://www.gov.uk/government/statistics/renewable-fuel-statistics-2019-final-report>.

As the next phase of changes emerge, with demand for fossil fuels expected to fall, potentially rapidly in the 2030s and beyond, companies in the sector are, again, considering their response to the challenges. UKPIA's Transition, Transformation and Innovation report,¹⁵ provides an illustrative pathway that shows that the sector can adapt to be part of the solution to Net-Zero but also making clear that significant (and costly) change will be needed to make that transition, and the increased risk of investing in the UK which results from this legislation is therefore untimely.

Scope of the “downstream oil sector activity”

Given the above case for investment in the sector to meet the UK's decarbonisation targets, it is notable that the Bill defines downstream as only the “supply of crude oil based fuels”¹⁶ although this is slightly expanded upon in the interpretation of crude oil based fuel as “any fuels comprised wholly or mainly of crude oil or substances derived from crude oil”.¹⁷ Given that around 4% of road fuels in the UK are already renewable transport fuels under the Renewable Transport Fuel Obligation¹³ and that potentially biofuel producers who supply high or 100% biofuels appear to be out of scope, it is unclear why the definition of the sector is drawn in narrow terms.

This focus on the supply of crude oil based fuels may also mean that positive, strategic moves by companies in order to address the challenge of decarbonisation could be restricted by the powers in order to protect crude oil fuel supply – there have been a few transformations of crude refineries to biorefineries in Europe in recent years¹⁸ which offer ready examples of such activity that these powers could stop.

Drafting notes

The use of “person” or “entity” is unclear throughout the Bill despite the definitions in the Interpretation section. It is UKPIA's view that the Bill should only make reference to entities rather than individuals. It is also noted that those persons in scope of penalties seem unusually wide-ranging (with directors and company secretaries sometimes subject to such penalties but others, such as managers, much less so), it is unclear why this is the case.

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¹⁵ UKPIA, Transition, Transformation, and Innovation Report, (2020)

<https://online.flippingbook.com/view/111037/>

¹⁶ BEIS, Downstream Oil Resilience Draft Bill. Part 1, Clause 1.1.b p9 (2021)

¹⁷ Ibid, Part 5, Clause 43.1 p33

¹⁸ Total Energies Press Release, Total Starts Up the La Mède Biorefinery (2021)

<https://www.totalenergies.com/media/news/press-releases/total-starts-la-mede-biorefinery>