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**The Rt Hon Anne-Marie Trevelyan MP**  
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Dear Darren,

I am writing in response to the announcement on 18 June 2021 that the Committee will be conducting a new inquiry to undertake pre-legislative scrutiny of the Downstream Oil Resilience Bill. As you are aware, the draft Bill sets out how the Government intends to address threats to security of fuel supply, prevent disruption and ensure resilience through powers introduced in the draft Bill.

Our priority as a department is to ensure that the United Kingdom has a secure and reliable energy supply and as we progress to a low carbon economy, our Net Zero targets will increase the pressure on the Downstream Oil sector and fuel demand generally.

The Bill will help us meet our policy intention to ensure that the risk of disruption is at a minimum and that economic activities are not disrupted through the loss of fuel supply. It will allow us to identify potential risks to supply and respond in a timely and appropriate manner instead of relying on emergency powers under existing legislation, including The Civil Contingencies Act 2004.

I am confident that the measures set out in the draft Bill will help us maintain a competitive, free-market downstream oil supply sector. My officials and I will continue to work collaboratively with the industry to ensure resilience in the sector and that these measures are used as a last resort rather than being interpreted as an unnecessary regulation of the market.

I attach a written submission to the inquiry as requested. I hope the evidence provided is helpful to the Committee. Please do not hesitate to contact me if I can be of further assistance. I look forward to the future evidence sessions with you.

Yours sincerely,

## THE RT HON ANNE-MARIE TREVELYAN MP

Minister of State for Energy, Clean Growth and Climate Change and  
UK International Champion on Adaptation and Resilience for the COP26 Presidency

### Call for evidence answers to the Select Committee

#### **Is the Government's policy on fuel resilience appropriate and effective?**

1. As set out in the "Policy Background" section of the Explanatory Notes to the draft Bill, the Government considers that the downstream oil sector plays a key role in UK energy security, supplying products that are vital to the UK economy and way of life. Security of supply and system resilience are not currently subject to specific regulation.
2. Over recent years there have been a number of incidents which risked disruptions to fuel supply including the fire at Buncefield, the insolvency at Coryton refinery and numerous strike threats. In response to this risk landscape, BEIS has reviewed the risks which could lead to disruptions to fuel supplies and the current state of sector resilience in Great Britain (set out in the 2017 consultation document<sup>1</sup>). The research findings took account of information supplied by many fuel companies to understand how fuels are manufactured, imported and distributed to retailers.
3. These studies reached the following conclusions:
  - a. There are a number of major GB infrastructure sites which are critical to regional fuel supply because other local infrastructure is too small to step up to replace them if they cease supply.
  - b. Supply chains are very dynamic and can adjust to disruption at these sites over a period of weeks but not immediately.
  - c. The key constraint is the limited logistics capability within the country to supply end users – not a national lack of access to fuel from refineries or imports.
  - d. A sudden failure at such a site could not be compensated for immediately and fuel shortages could occur within days.
  - e. There is a market failure in that while individual suppliers invest strongly in the resilience of their own supply chain, there is no mechanism for them to share the costs of system resilience as a whole.
4. This analysis has informed the continued development of the National Emergency Plan for Fuel which sets out the range of response measures which the Government currently has at its disposal to maintain fuel supply or in extreme circumstances control the supply and demand of fuels<sup>2</sup>.
5. The need for action in this area is likely to become even greater as the UK continues its transition to net zero emissions, which will involve a long-term reduction in the demand for oil-based transport fuels. As the sector responds to these changes, the ability of the system to protect the continuity of fuel supplies and be resilient to disruptions will come under increasing challenge as reductions in demand are likely to lead to declining investment and infrastructure rationalisation driven by individual companies' commercial drivers. This rationalisation of infrastructure is already underway with refineries reducing capacity and smaller import and distribution terminals closing. During this transition, the country will continue to be dependent on fuels and a reliable supply must be maintained.
6. As explained further below, the Government considers the current powers are responsive in nature and insufficient to ensure a sufficient level of resilience in the

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<sup>1</sup> <https://www.gov.uk/government/consultations/downstream-oil-supply-resilience>

<sup>2</sup> <https://www.gov.uk/government/publications/energy-emergency-plans-priority-fuel-allocation>

sector. Government is, therefore, seeking to put in place a small number of light-touch measures which provide it with the tools to identify fuel supply risk and support industry in ensuring downstream oil sector resilience. These measures are intended to work within the structure of the fuel supply market. The measures proposed would allow Government additional protections for the infrastructure sites that are essential to maintain regional fuel supplies and would give powers to minimise risks that failures of such sites would result in fuel shortages. Government considers that these measures are an appropriate and effective response to the issues faced by the downstream oil sector, and its key role in the UK.

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

7. The draft Bill introduces a package of measures that will enable the government to collect evidence on the fuel supply risks and take action to mitigate these when required. The package will complement existing resilience measures described in the National Emergency Plan for Fuel, such as the lease contract for the reserve tanker fleet and a programme to provide military drivers for fuel tankers. The Bill will allow better risk assessment and design of mitigation measures and enable the government to facilitate or intervene where supply resilience is compromised.
8. The main measures introduced in the Bill are:
  - a. *Direction power - a back-stop power to direct Downstream Operators to take action that may be necessary to ensure resilience and continuity of supply.*
  - b. *Information power - to enable collection of information to better understand the impact of potential disruptive events, and to use the information to support industry in improving fuel resilience.*
  - c. *Restriction on acquisitions (control test power) - to ensure that new owners of critical fuel infrastructure are financially sound and operationally capable.*
  - d. *Financial assistance power - to enable Government to support supply resilience improvements.*
9. The draft Bill makes it clear that it will only apply to the larger operators and infrastructure in the Downstream Oil Sector, those with a supply handling capacity above the thresholds which are outlined in the Bill.
10. The Government considers that this package of measures will assist in achieving the stated policy objectives. However, we will continue to work with industry to refine the proposed measures, to ensure those objectives are achieved and the disruption to market functioning is minimal.

**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?**

11. The Government considers that the measures in this draft Bill are necessary because the existing legislation does not provide the powers necessary to maintain good sector resilience given the risks described above. In order to ensure that the new powers are proportionate, they have all been drafted in a way that limits their scope (e.g. by reference to specific purposes and the used of thresholds for infrastructure and operators), and applies appropriate procedural safeguards (e.g. consultation requirements and appeal routes).
12. The direction powers in the draft Bill are necessary in that they help improve fuel supply resilience ahead of emergencies developing, unlike the Energy Act 1976 and the Civil Contingencies Act 2004. The powers in those Acts are primarily directed to emergency situations and would not enable Government to direct in relation to emerging risks or the need for more effective contingency planning. For example, we may need to address weaknesses in a company's security arrangements or their contingency planning for major national risks. The proposed new powers of direction are intended to support our current engagement with industry to encourage them to adopt additional

measures on a voluntary basis and to consult them on which measures would be most effective and economic. The new power is designed to address the current gap between the voluntary approach, and an emergency situation where Government already has powers to act.

13. The information power is necessary because Government does not currently have powers to require the downstream oil sector to report regularly on the resilience of their infrastructure, contingency planning or incidents and risks to the Secretary of State. The powers it does have, for example those in the Statistics of Trade Act 1947, are primarily for the purposes of gathering statistics and monitoring economic trends. A better understanding of and access to comprehensive information would assist Government in assessing the impact of any loss of infrastructure on fuel supply and enable us to make a more accurate assessment of the resilience across the sector. Recent studies have relied on voluntary response to requests for information and, while most companies have responded the quality of the responses has been variable.
14. Government aims to protect the UK's most critical assets and services, whilst ensuring our economy remains open for investment. The restrictions on acquisitions are necessary because there are currently no powers that enable Government to intervene in changes of ownership or control for resilience purposes in the event that unsuitable investment prejudices UK fuel supply resilience. While the Government does have some powers to intervene in acquisitions, for example under the Enterprise Act 2002 and National Security and Investment Act 2021, these do not allow action to be taken in relation to resilience issues.
15. Finally, the Secretary of State does not have specific powers to spend in relation to downstream oil resilience, in particular maintaining security of supply. A spending power for the purposes of energy resilience would enable Government to support industry in implementing resilience protection or improvement measures to protect UK fuel supplies.

#### **How did the Government's 2017 consultation on Fuel Resilience Measures inform the draft Downstream Oil Resilience Bill?**

16. Government completed a formal written consultation in 2017. The consultation sought views on proposed measures to maintain the security of fuel supply to consumers. The consultation, and Government's recognition of the sector's strategic importance, was welcomed by stakeholders from across the supply chain. Many respondents were encouraged by Government's preference for light-touch market intervention and the draft Bill ensures that the measures align with the structure of the fuel supply market and minimises any impacts on market dynamics or competitiveness which was one of the main concern's respondents had during the consultation.
17. The draft Bill does not seek to implement a fully regulated sector, e.g. through a licensing regime which was a major concern for stakeholders during the consultation.
18. Stakeholders also expressed their views on the proposed measure of '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 (RTF) from government to industry. The Government response acknowledged the need for further discussions. Government later concluded based on feedback from respondents 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 RTF capability at this time.
19. During the consultation, government proposed that companies owning more than six fuel stations might have to report data, irrespective of whether they have automated electronic systems to report information. Following consideration of stakeholder views regarding this requirement during the consultation, we have removed the need for such companies to report fuel stock information due to the administrative burden this might cause. The measure in the draft Bill for information reporting has been designed to

ensure that reporting thresholds and the reporting processes impose the least burden possible.

20. The drafting of the control test measure under the draft Bill makes it clear that it only applies to domestic assets as a result of the feedback we received from stakeholders during the consultation over concerns that there were potential implications for large international companies and these might discourage international investment in the sector.
21. The measure to provide financial assistance in order to secure or maintain continuity of supply has also been informed by feedback that owners might not be motivated to maintain facilities and that there might be an increase in the call for government support and competition impacts. The provision in the draft Bill has been drafted such that financial intervention will not distort competition as support might take various forms and will be decided on a case-by-case basis. The power is intended as a backstop in case there is an overwhelming need for intervention and there is no allocated budget for this purpose.

### **Have the views of stakeholders been taken account of in the draft Downstream Oil Resilience Bill?**

22. The views of the stakeholders have been taken into account during the drafting of this draft Bill. The government engaged with the stakeholders about their views through a consultation, launch event and targeted workshops to discuss the policy proposals and to get feedback on the measures proposed. Discussions continued after the formal Government response.
23. As explained above, government has revised some of the measures now being given legal form in the draft Bill. For example, after collecting stakeholders' views, the government did not take forward the measures relating to 'industry schemes'. Consumer groups during the consultation were supportive as long as there was no material increase to the cost of fuel, which there should not be.
24. The Government will take the opportunity presented by the publication of the Bill in draft to continue discussion with stakeholders and ensure all views and concerns are taken into account before the introduction of the Bill. The BEIS policy team has a good working relationship with industry stakeholders and at every opportunity, encourages stakeholders to communicate any further thoughts or views on the draft Bill.

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

25. The Government's view is that the measures contained in the draft Bill are appropriate, sensible, and workable. The draft Bill introduces a small package of measures which will improve the Government's ability to manage the risk of disruption to economic activity and normal life from the loss of fuel supplies. As explained above, the measures have been developed with the participation of stakeholders, and Government continues to engage with stakeholders to ensure the policy objectives are achieved in a way that minimises disruption to the market.
26. The Government will also work with the industry as we continue to prepare the policy guidance and statutory instruments which will define how these will work in practice. There will be further consultation with stakeholders in line with good practice for the introduction of statutory instruments and guidance.

### **Do stakeholders have any other concerns about the draft Bill?**

BEIS are not aware about any major concerns from stakeholders about the draft Bill. We have started a structured engagement with the industry to discuss the measures set out in the draft Bill and to get initial feedback, and stakeholders have not raised any issues so far. We will be carrying out detailed sessions with them to address any concerns they might have about the draft Bill.