

## Response ID ANON-N8CD-K69E-C

Submitted to Core fuel sector resilience measures: proposed guidance on criminal and civil sanctions  
Submitted on 2024-07-08 16:15:55

### About you

What is your name?

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Company Name or Organisation (if applicable)

Company or organisation name:  
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Please tick one box from the list below that best describes you /your company or organisation.

Trade Association

Other (please describe):

If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members:

Please respond here :

We have 8 member companies and 8 associate member companies all of whom were asked to input to this consultation

Responses and personal details will be treated in accordance with the appropriate legislation (including but not limited to the Freedom of Information Act, the Data Protection Act and the Environmental Information Regulations). If you have any specific requests/concerns about this please state below giving your reasons:

Please respond here :

How did you hear about this consultation?

How did you hear about this consultation?:  
Email from this department

Other (please specify):

The sanctions to which a person may be liable

1 Do you have comments on the guidance on the sanctions that may be taken, including the proposed wording of this chapter of the guidance?

Not Answered

Please respond here:

We do not agree that a criminal sanction (imprisonment) is appropriate for this type of administrative legislation. We believe a financial sanction would be much more appropriate and aligned to that in other regulations in the energy industry.

The lack of a statutory limit on the maximum fine is an unreasonable risk on businesses in England and Wales and should be limited at a level in line with the limited benefits of the measures being considered i.e. the impact assessment shows that the maximum benefit to society is small, so the potential for an unlimited fine is disproportionate. As a minimum, the threshold should not be higher than the maximum in Scotland and Northern Ireland.

We note that the provisions for prison terms are intended to be consistent with other offences of a similar nature, however, as noted at previous stages of consultation, the application of the Core Fuels measures to persons who are not part of senior corporate governance e.g. 'managers' is not consistent with other legislation and represents a high level of risk for individuals who may not have suitable power or influence over their business to fairly be held accountable.

2 Would you prefer to see any additional information? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

Yes

Please respond here:

It would be helpful to specify the statutory maximum amounts where referred to for ease of reference (paragraph 18).

Are trade associations included by the "members of a body corporate whose affairs are managed by members (rather than directors)?" (paragraph 22)

### Action that may be taken

3 Do you have comments on the guidance on the action that may be taken, including the proposed wording of this chapter of the guidance?

Yes

Please respond here:

We welcome the approach to include a warning letter in advance of other sanctions (paragraph 26), however, note that it would be helpful to have consistency in their use whereby they are always the 'first step', rather than 'not being a prerequisite' as noted in paragraph 27. If it is decided that a letter should not be a prerequisite, it should be clarified when and why it will be used and when and why not e.g. it is expected for first offences but not repeat offences or would only apply to reporting powers and not directions.

In paragraph 35, it appears that the Chapter referred to should be Chapter 5 (not paragraph 3).

4 Would you prefer to see any additional information? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

Yes

Please respond here:

It might be appropriate to set a limit on a time period when a warning letter could be used again for a similar non-compliance, e.g. if 2 years have elapsed since the last non-compliance.

On enforcement undertakings, which are a welcome approach, it would be helpful to understand more about what is likely to be a compelling offering to the Secretary of State and how it will be assessed by the Department. It is also suggested as a 'proactive' offering but unclear at which point of enforcement it can be proactively offered – with the preferred option being that it would be considered at all times, including after a Direction.

### Circumstances in which enforcement action is likely to be taken

5 Do you have comments on the guidance on the circumstances in which enforcement action is likely to be taken, including the proposed wording of this chapter of the guidance?

No

Please respond here:

6 Do you have comments on the guidance in relation to prosecution in this chapter, including the proposed wording?

Yes

Please respond here:

We note that generally prosecution is likely to be considered in cases where the impact or disruption to core fuel supply and its consequences are particularly severe and/or if there is repeated offending. What would be considered "severe" consequences and what level of repeat offending is required to warrant prosecution versus an alternative form of sanction as presumably each offence will have already received an appropriate sanction based on the circumstances?

7 Would you prefer to see any additional information in this chapter? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

Yes

Please respond here:

It would be useful to clarify that only Core Fuels measures compliance will be considered in terms of a person's previous history (paragraph 49).

#### Enforcement undertakings- how the Secretary of State's functions are expected to be exercised

8 Do you have comments on the guidance with regards to enforcement undertakings and how the Secretary of State's functions are expected to be exercised, including the proposed wording?

Yes

Please respond here:

The criteria captured for assessment by DESNZ (paragraph 52) are vague and difficult to quantify – this will mean that it is difficult for a company to be confident of their enforcement undertaking being agreed to (or not). As noted in Q4, it would be helpful to have greater clarity about how undertakings will be assessed, and against which criteria.

9 Would you prefer to see any additional information in this chapter? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

Yes

Please respond here :

Will it be a requirement for a company to have a compliance certificate (paragraph 60)? If so, then it may make more sense for it to be issued as standard once DESNZ is content that a company is in compliance.

#### Procedure for enforcement undertakings

10 Do you have any comments on the procedure for entering into enforcement undertakings, including the proposed wording?

Yes

Please respond here:

It is unclear if paragraphs (68) and (69) are alternative initial engagement approaches or if paragraph (69) only applies once a company has been proactive as per paragraph (68).

11 Would you prefer to see any additional information in the procedure? If so, please explain why the suggested addition(s) would aid your understanding and refer to any relevant paragraph numbers in your answer.

Yes

Please respond here:

As noted in the responses to Q4 and Q8, it would be helpful to have greater clarity about how undertakings will be assessed, and against which criteria as well as the point at which an undertaking can be proactively initiated.

12 Is it useful to publish the procedure for enforcement undertakings together with the guidance?

Yes

Please respond here:

Yes, this is helpful to understand how all requirements on companies fit together as a whole – see also the response to Q14, where we view additional Guidance on the Powers of Direction is also needed.

#### Additional Questions

13 Do you have any comments regarding the overall structure, form, or style of the guidance?

Yes

Please respond here:

Fuels Industry UK views that Guidance is still required on the Powers of Direction for industry to have greater clarity on the process for use of such powers. The powers remain extremely 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.

As noted previously, there are no guarantees to industry that the powers would be used as a last resort, and the legislation does not require prior engagement with a directed party, despite reassurances from officials on both points since the proposals were tabled. Having more, clearer, information on the process for use of the powers of direction would be helpful for companies, as would examples of situations in which the powers may be used.

14 Are there any sections of the guidance or the procedure for undertakings you do not think it is necessary to include in the final publication of these? Please refer to relevant paragraph numbers in your answer.

No

Please respond here :