

DRAFT DOWNSTREAM OIL RESILIENCE BILL
DELEGATED POWERS MEMORANDUM – PRE-LEGISLATIVE SCRUTINY

A. INTRODUCTION

1. This memorandum has been prepared by the Department for Business, Energy and Industrial Strategy for the Business, Energy and Industrial Strategy Committee, to assist with its pre-legislative scrutiny of the Downstream Oil Resilience Bill (“the Bill”), and for the consideration of the Delegated Powers and Regulatory Reform Committee. The Bill was published in draft on 7 June 2021. This memorandum identifies the provisions of the Bill that confer delegated powers. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

1. The Bill comprises measures which provide the Government with a suite of powers to ensure that resilience in the United Kingdom fuel supply system is maintained. Measures only apply to entities operating or owning facilities in the downstream oil sector and are limited for the purpose of ensuring fuel supply resilience. In summary, the measures are:
 - a) Resilience Directions (clauses 3 to 8) – a power to direct downstream operators to take action that may be necessary to ensure resilience and continuity of supply.
 - b) Information (clauses 9 to 14) – 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 (clauses 15 to 25) – to ensure that new owners of critical fuel infrastructure are financially sound and operationally capable.
 - d) Financial assistance (clause 40) – to enable Government to support supply resilience improvements.
2. The downstream oil sector is all parts of the industry from the point crude oil arrives at a terminal or refinery, through the refining process (including the use of non-crude oil additives) until the point of sale to a final industrial or domestic customer. This is distinct from the upstream oil sector, which covers all parts of the industry involved in seeking and obtaining oil from the ground and getting it to a terminal or refinery. As such downstream oil does not include fracking.
3. The downstream oil sector comprises over 200 companies involved in the refining, importing, distribution and marketing of petroleum products. The sector plays a key role in UK energy security, supplying products that are vital to the UK’s economy and way of life. Infrastructure includes six major refineries, 61 major terminals, 3,000 miles of pipeline and 8,400 filling stations. UK refineries produced a total of 59 million tons of oil products in 2019, with UK total demand at 68 million tons. About two-thirds of the output is petrol, diesel, jet fuel, and fuel oil. The annual volume of road transport fuels sold in the UK is 44 billion litres.
4. In the main, the sector is efficient, flexible and effective in ensuring the continuity of fuel supply. However, it is also responding to global market factors and, as it changes,

the ability of the UK supply system to protect the continuity of fuel supplies and be resilient to disruptions needs to be maintained. There is no central authority or mechanism in the downstream oil supply system by which supply capacity can be managed. Instead, supply capacity is determined by individual enterprises, and capacity investment and rationalisation are driven by competition. In a competitive marketplace, participants may not know the supply capability of their competitors or, consequently, the system as a whole.

5. The UK market for petroleum products is a mature market, facing both changing patterns of demand and high levels of global competition. The consequence has been:
 - a) fragmenting supply chains with major oil companies, which used to run vertically integrated well-to-pump operations, divesting themselves of categories of assets or outsourcing some operations; and
 - b) relatively high utilisation rates and closures of spare or uneconomic capacity. For example, currently there are six UK oil refineries, down from a high of 19 in 1975, and the number of filling stations has declined from around 18,000 sites in 1990 to 8,400 now.
6. There are a number of inherent risks to fuel infrastructure, including accidents, severe weather, malicious threats, industrial action and financial failure. As in other important sectors like this, Government works with fuel suppliers to mitigate such risks. However, not all risk can be prevented.
7. The sector has also faced new and growing pressures and risks in recent years. In addition to the additional stress imposed by the Covid-19 pandemic, the sector is now faced with an increasingly ambitious trajectory for reduction of greenhouse gas emissions. On 27 June 2019, the target in s1(1) of the Climate Change Act 2008 was amended, requiring the UK to bring all greenhouse gas emissions to net zero by 2050. On 20 April 2021, the Government confirmed it would adopt a sixth carbon budget requiring the cutting of emissions by 78% by 2035 compared to 1990 levels. As the UK makes this transition to a zero carbon economy, it will still need to ensure reliable fuel supplies are available. Critical services (public and private sector) will continue to be dependent on oil for many years, while the sector comes under increasing economic pressure due to the prospect of falling demand.
8. The Government undertook an internal research project in 2014-15, which examined evidence of GB fuel supply system resilience and risks to supply. The research findings took account of information supplied by many fuel companies. The findings of the research project (which were confirmed by a repeated assessment in 2019-20) were:
 - a) There are a number of major GB infrastructure sites which are essential to regional fuel supply because other local infrastructure is too small to replace them if they cease supply (also referred to as 'single points of failure').
 - b) Supply chains are very dynamic and can adjust to disruption at these sites over weeks but not immediately.
 - c) The key constraint is finite logistical capability of pipelines and tankers within the country to distribute fuel to retail sites – not a national lack of access to fuel from UK refineries or imports.
 - d) A sudden failure at the identified essential sites 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 in the resilience of their own supply chain, there is neither a mechanism nor a market incentive for them to share the costs of investing in system resilience as a whole.

9. From discussions the Government has held with industry, there were also several features of the companies' approach to managing risk that give us cause for concern when we consider resilience to lower probability but high impact risks.
10. As explained further below, existing powers, for example under the Energy Act 1976, are primarily directed to addressing emergency situations. They do not allow Government to monitor the resilience of the sector as a whole, and provide limited or no powers to identify and address lower probability, high impact risks at an early stage. Government therefore has only a limited ability to ensure that such risks do not eventuate and give rise to the type of emergency situations in which existing powers may be exercised.
11. To address these concerns, Government's approach is to put in place a small number of measures that provide Government with the tools to identify fuel supply risk and support industry in insuring fuel supply resilience, with further back-stop powers to protect fuel supply resilience when required. These measures are designed to work with the structure of the fuel supply market.
12. The Government held a consultation ('Proposals to strengthen the resilience of fuel supply to UK consumers') from 17 October 2017 to 12 December 2017 on the measures now included in the Bill. The consultation served to obtain a formal view from industry and other interested parties on the proposed measures, seek ideas as to how these proposals can be improved and gather further evidence on regulatory impacts.
13. A response to the consultation was published on 17 April 2018. The response confirmed that Government has heard clearly industry's calls for a light-touch approach to measures and has given careful consideration to minimise any impacts on market dynamics and competitiveness.
14. On 14 December 2020, the Government published an Energy White Paper ('Powering our Net Zero Future'). In that White Paper, the Government stated its intention to take powers to ensure the UK maintains a secure and resilient supply of fossil fuels during the transition to net zero emissions. Further to that intention, the Government confirmed that it would look to publish a draft of this Bill while it sought an opportunity to introduce these measures to Parliament.
15. The Bill was subsequently published in draft on 7 June 2021, and since publication the Government has been engaging further with industry to seek input on the specifics of the Bill clauses and practicalities of the legislation.

C. DELEGATED POWERS – OVERVIEW

1. The Bill contains a number of delegated powers to make regulations (set out below) which are each subject to the level of scrutiny that the Government considers appropriate. The power to amend the thresholds set out in the Bill (clause 41) is the only substantive power which enables changes to be made to primary legislation (a Henry VIII clause), but it is limited to making changes to this Bill only.
2. This is not considered as a framework / skeleton Bill. The delegated powers are intended to generally set out the operational detail of each of the measures, rather

than the scope or function of the primary powers or the policy underlying those powers.

3. The Government has sought to limit the scope of the delegated powers, for example by setting appropriate thresholds and definitions for the downstream undertakings that may be affected. For example, the ownership test will only apply to transactions involving assets with throughput greater than 500,000 tonnes of oil per year (only including critical / major sector assets).
4. There are also powers for the Secretary of State to make directions, and requirements for the Secretary of State to make and lay a statement addressing the exercise of functions in relation to restrictions on acquisitions, and to publish certain guidance and a procedure in relation to the enforcement measures. The Government does not consider that all of these provisions delegate functions or powers that are strictly of a legislative nature, but noting the relevant guidance¹ has included these provisions in this memorandum to ensure the Committee has the opportunity to scrutinise the proposed powers in full.

Clause	Type of Legislation / Power	Description / Purpose	Parliamentary Procedure
Part 2 – Powers for Resilience etc. Purposes			
3(1)	Directions	For the purpose of maintaining or improving downstream oil sector resilience	None
3(3)	Directions	For the purpose of restoring continuity of supply of crude oil based fuel or counteracting the disruption to or failure of continuity of crude oil based fuel, or its potential adverse impact	None
3(5)	Directions	For the purpose of reducing the risk of disruption to, or a failure of, continuity of supply of crude oil based fuel, or reducing the potential adverse impact of the disruption or failure	None
8(1)	Regulations	For the purpose of maintaining or improving downstream resilience	Affirmative Resolution
8(2)	Regulations	Corresponding to directions under clause 3(3)	Affirmative Resolution
8(4)	Regulations	Corresponding to directions under clause 3(5)	Affirmative Resolution

¹ In particular paragraph 27 of the Guidance for Departments issued by the Delegated Powers and Regulatory Reform Committee in July 2014 and paragraph 16.9 of the Guide to Making Legislation issued by the Cabinet Office in July 2017.

10(2)(c)	Regulations	To specify a class or description of persons who are to be subject to a duty to report incident	Negative Resolution
12(1)	Regulations	To require a person to provide information to the Secretary of State, at specified intervals, relating to the person's relevant activities or assets	Affirmative Resolution
Part 3 – Restriction on Acquisitions			
15(5)	Regulations	To make provision about applications for consent to make a qualifying acquisition	Negative Resolution
23(1)	Statement	Statement about how functions in relation to applications for consent to make qualifying acquisitions will be exercised	Affirmative Resolution
36(3)(b)	Regulations	To specify a description of actions to be taken in an enforcement undertaking	Affirmative Resolution
Part 4 – Enforcement			
38(1)	Guidance	Guidance as to enforcement of offences	None
39(1)	Guidance	Guidance as to use of civil sanctions	None
Part 5 – General			
41(1) Henry VIII	Regulations	Amendment or modification of the thresholds specified in certain provisions of the Bill	Affirmative Resolution
44(2)	Regulations	Commencement and transitional, transitory or saving provisions	None

D. DELEGATED POWERS

Clause 3(1): Power to give directions for the purpose of maintaining or improving downstream oil sector resilience

Clause 3(3): Power to give directions for the purpose of restoring continuity of supply of crude oil based fuel or counteracting the disruption to or failure of continuity of crude oil based fuel, or its potential adverse impact

Clause 3(5): Power to give directions for the purpose of reducing the risk of disruption to, or a failure of, continuity of supply of crude oil based fuel, or reducing the potential adverse impact of the disruption or failure

Power conferred on: Secretary of State

Power exercised by: Direction

Parliamentary Procedure: None

Context and Purpose

1. Clause 3 gives the Secretary of State three related powers to give directions requiring a person to whom the clause applies to do anything in relation to that person's relevant activities or assets.
2. First, Clause 3(1) gives the Secretary of State the power to give directions for the purpose of maintaining or improving downstream oil sector resilience (as defined in clause 2(1)).
3. Second, in the event that the supply of crude oil based fuel is disrupted or fails, clause 3(3) gives the Secretary of State the power to give directions to do anything the Secretary of State considers necessary or expedient to restore continuity of supply or address or mitigate the disruption or failure.
4. Third, in the event that the Secretary of State considers there to be a significant risk that the supply of crude oil based fuel will be disrupted or fail, clause 3(5) gives the Secretary of State the power to give directions to do anything which the Secretary of State considers necessary or expedient to reduce the risk or the potential impact of such disruption or failure.
5. Clause 4 provides that directions may be general or specific, and can impose requirements for a limited period, at specified intervals, or indefinitely. It also provides that directions can be to do anything, refrain from doing anything or to achieve an outcome. Directions can also make different provisions for different purposes, and may be modified or revoked by later directions.
6. The circumstances in which directions under clause 3 can be given are limited: in the case of clause 3(1) by purpose; and in the cases of clauses 3(3) and 3(5) by reference to specific circumstances (as set out in clauses 3(2) and 3(4) respectively) and to what is necessary and expedient to achieve the specified purposes. The class of people to whom a direction can be given is also restricted by the capacity thresholds for their business or facility (as appropriate) set out in clause 3(6), and a direction can only relate to the recipient's downstream oil sector activities or facility.
7. Clause 5 sets out the procedure for giving directions under clause 3 and requires the Secretary of State to give the proposed recipient an opportunity to make written representations. The Secretary of State also has to consult with:
 - a) the Health and Safety Executive or Health and Safety Executive for Northern Ireland (as appropriate); and
 - b) the relevant "competent authority" under the Control of Major Accident Hazards Regulations 2015 or the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (as appropriate) (the "COMAH competent authority"). The COMAH competent authority is made up of two bodies acting jointly: the relevant Health and Safety Executive; and the relevant environmental protection agency, i.e. the Environment Agency, the Scottish Environment Protection

Agency, the Natural Resources Body for Wales or the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.

8. In addition to the mandatory consultees, clause 5 also obliges the Secretary of State to consult with any other persons the Secretary of State thinks appropriate before making a final decision as to whether or not to give a direction. Clause 6 provides for the recipient of a direction to appeal to the First-Tier Tribunal.
9. Failure to comply with a direction without reasonable excuse is an offence under clause 7.
10. These powers are intended to allow Government to give directions to industry where necessary for resilience purposes, so they are better able to maintain supply in the event of disruption to supply of fuel etc., either pre-emptively or when such a disruption has actually arisen. It is intended to be used only as a backstop or last resort, where Government considers industry has not taken proportionate measures to mitigate resilience risks. The capacity thresholds and definition of relevant assets and activities are intended to ensure that directions can only be given in relation to critical / major sector assets and activities.
11. These are not considered to be legislative powers, because directions will impose specified obligations on individual entities, rather than being measures of more general effect (as will be the case, for example, for regulations made under clause 8).

Justification for Taking the Power

12. The rationale behind taking this power to direct is set out in paragraphs 5 to 10 above. In particular, the Government was concerned at some of the approaches to managing risk. To ensure the UK's fuel supply remains secure and reliable, the Government considers that there may be certain situations or circumstances in which it needs to be able to ensure that major fuel supply companies take action that is in the interests of the country as a whole. Under a simple market-based approach these businesses may not have the commercial incentive or even the information necessary to do so. The power to direct under clause 3(1) gives Government the ability to ensure that action can be taken for the purpose of maintaining or improving downstream oil sector resilience. The powers to direct under clause 3(3) and 3(5) are to allow action to be taken to ensure continuity of supply when there is an actual disruption of some kind, or a significant risk of such disruption.
13. The Government already has some limited powers to control the downstream oil sector industry. For example, it has powers of direction and regulation under the Energy Act 1976 and powers to make regulations under the Civil Contingencies Act 2004. However, these powers can only be exercised in certain situations and for certain purposes (primarily to respond to emergency situations, or for orders under section 1 of the Energy Act 1976 for conserving energy). The Government also has powers under the Offshore Safety Act 1992 to give directions for security purposes in relation to certain refineries and oil terminals.
14. These existing powers would not enable Government to direct industry participants to take appropriate steps in relation to emerging risks or the need for more effective contingency planning. This new power is therefore intended to ensure that Government can require industry participants to take appropriate steps to ensure they have appropriate resilience measures in place.

15. It is envisaged that directions could be given where industry participants were not implementing good practice standards in operational areas, for example in relation to site security, flood defences or contingency planning for nationally significant risks (e.g. pandemic or failure of electricity or telecommunications systems). Such directions should reduce the chances of the sort of sudden failure identified at paragraph 9(d) above arising. Examples could include requiring an improvement in the maintenance of a particular asset, construction works such as digging a trench, building a wall or installing security cameras.
16. Directions could also be given to ensure that measures that improve overall system resilience, to address the issue identified at paragraph 9(e) above. For example, in the UK, there are several examples of where pipelines run close to terminals, but no connection exists to allow the terminal to be supplied from the pipeline. Most often this is due to the owners of the pipeline not having any ownership interest in the terminal or the terminal having the ability to receive supply from another pipeline that the terminal owner has equity in. In these cases, there may be limited commercial drive to install a new pipeline connection, as the pipeline owner may prefer to sell product to their own terminal rather than one belonging to a competitor. However, if supply from the one pipeline was disrupted, or rack capacity (the ability to load fuel into tankers for distribution) at a terminal lost, it would increase overall system resilience to have the additional flexibility to supply between the different pipelines and terminals.
17. By allowing the Government to ensure that the downstream oil sector is prepared for future risks and has a high level of resilience, this should reduce or remove the impact of any emergency situations on the sector and the resulting effect on the wider public.
18. Section 5 of the Offshore Safety Act 1992 provides a precedent of a similar power. However, the Government does not intend a direction under clause 3 to disapply or override any existing legal regime, so no equivalent provision to section 5(3) of that Act is required.

Justification for Procedure Selected

19. As above, the Government considers that giving a direction under clause 3 would be an executive, rather than legislative, function. The Government therefore proposes that no level of parliamentary scrutiny is required.
20. Although the power of direction is wide in terms of the action that could be required, directions would only be given to specific persons, who must be within the limited class set out in clause 3(6). In the event that the Secretary of State considers that action should be taken by an entire group or class of persons, the Secretary of State would have to exercise the power in clause 8 to make regulations, which is subject to the affirmative procedure. The direction powers in clause 3 can also only be used for a specific purpose. Procedural safeguards are set out in clauses 5 and 6 including the requirement to give prior notice, a period for written representations, a duty to consult and a right to appeal.
21. As noted above at paragraph 38, directions under clause 3 would not disapply or override any existing legal regime, as is the case for directions under s5 of the Offshore Safety Act 1992. Copies of any direction under that Act have to be laid before both Houses of Parliament, but the Government considers that there is no need for a similar provision in this case, given the more limited effect of a direction under clause 3.

Clause 8(1): Power to make regulations for the purpose of maintaining or improving downstream resilience

Clause 8(2): Power to make regulations corresponding to directions under clause 3(3)

Clause 8(4): Power to make regulations corresponding to directions under clause 3(5)

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

22. Clause 8(1) is the corresponding regulation-making power to the direction-making power in clause 3(1). It enables the Secretary of State, for the purpose of maintaining or improving downstream oil sector resilience, to require eligible downstream operators or facility owners to do anything in relation to their relevant activities or assets which a person to whom clause 3 applies could be required to do by a direction under clause 3(1).
23. Clause 8(2) is the corresponding regulation making power to the direction making power in clause 3(3). It enables the Secretary of State, by regulations, to impose on eligible downstream operators or owners requirements equivalent to those that could be imposed by a direction under clause 3(3). Clause 8(3) limits the exercise of this power to times when there is disruption to, or failure of, continuity of supply of crude oil based fuel.
24. Similarly, clause 8(4) is the corresponding regulation making power to the direction making power in clause 3(5). It enables the Secretary of State, by regulations, to impose on eligible downstream operators or owners requirements equivalent to those that could be imposed by way of a direction under clause 3(5). Clause 8(5) limits the exercise of this power to times when the Secretary of State considers there to be a significant risk of disruption to, or failure of, continuity of supply of crude oil based fuel.
25. Clause 8(6) specifies the class of people in relation to whom regulations can be made. This is restricted by the capacity thresholds for the relevant person's business or facility (as appropriate). The thresholds are lower than those set for directions in clause 3(6), to allow regulations to be made in relation to smaller businesses or facilities. This is to allow steps to be taken to ensure resilience in supply at local or regional level, for example for business supplying particular isolated communities such as the Scottish Hebridean Islands. While issues at individual smaller sites are unlikely to have an impact on overall fuel supply or resilience it is also a realistic prospect that a population of these smaller sites acting together can improve the resilience of the fuel supply market as a whole.
26. Regulations made under clause 8 may provide that a person who without reasonable excuse fails to comply with a requirement imposed under the regulations commits an offence.
27. Prior to making any regulations under clauses 8(1), 8(2) or 8(4), the Secretary of State must consult with the relevant Health and Safety Executive and COMAH competent authority, and any other persons the Secretary of State thinks appropriate (see paragraph 27 above).

28. The general purpose for this measure is the same as that of the directions in clause 3 (see paragraph 30 above). However, there are circumstances where actions may be required for a larger number of operators or owners and therefore application by regulations to a class or category of operators or owners would be more appropriate. For example, a standard of contingency planning or measures may be necessary for all “Designated Filling Stations” (DFS) (part of a priority fuel supply plan under the National Emergency Plan for Fuel). DFS are of relatively low capacity but have a critical function in response to an emergency – a direction (by way of regulations) would be a means to ensure some particular aspect of their resilience and ability to respond to or mitigate a disruption.
29. A precedent for this power may be seen in section 17(5) of the Energy Act 1976. As noted above at paragraph 33, that Act provides, *inter alia*, for a power to give directions in certain emergency situations. Section 17(5) provides that where the Act confers power to give directions for any purpose, there is also a power to make provision for that purpose by order to all, or to any class of, persons to whom directions could be given. Section 17(1) provides that such orders are to be made by statutory instrument and to be subject to annulment in pursuance of a resolution of either House of Parliament.

Justification for Taking the Power

30. In contrast to the power of direction in clause 3 which are to be made to individual persons, the regulations are to apply to a class of persons. The Government believes it is appropriate that a class of persons are better dealt with by way of regulations, with the corresponding parliamentary procedure, than by way of direction. The Government also believes it would not be appropriate to impose an offence, or the mode of trial and levels of sanction, by way of direction.
31. The purpose of the power is as set out in paragraph 48. Using the same example as above, regulations could, for example, apply to all downstream oil companies who operate a Designated Filling Station. This would capture within scope some 750 forecourts across Great Britain, the ownership / operation of which changes frequently. Setting a class in regulations would therefore be more appropriate than issuing a direction to each individual location and issuing a subsequent direction to each new owner / operator, and it also enables Parliamentary scrutiny of a potentially broad impact on a sector.
32. The Government believes it is appropriate for the Secretary of State to decide whether non-compliance with a requirement under the directions should be a criminal offence, because it is conceivable that the requirements under the regulations will differ according to the situation or circumstances to which they are intended to address. It is therefore possible that relatively minor actions may be required under the regulations, such that it would be disproportionate to criminalise non-compliance. Conversely there may be critical actions required to be performed within strict time limits which may justify the imposition of criminal sanctions for non-compliance. Offences will only be imposed through regulations in accordance with applicable guidance and following consultation with relevant consultees as required by clause 8(9), and only where it is rational and proportionate to do so.

Justification for Procedure Selected

33. Regulations made under clause 8 will be subject to the affirmative procedure. The Government believes this is the appropriate level of scrutiny for potential interference

with the activities or assets of a class of persons, and for the imposition of an offence for non-compliance.

34. Prior to laying any regulations in draft the Secretary of State must consult with the mandatory consultees specified in clause 8(9). In practice, the Government would also engage with stakeholders and / or key trade bodies to develop regulations.
35. As noted above, orders under section 17(5) of the Energy Act 1976 are made by statutory instrument and are subject to annulment by either House of Parliament. Those orders can only be made in certain emergency situations, whereas regulations under clause 8 of the present Bill are not intended for use in such exceptional circumstances. Accordingly, the Government considers that it is appropriate for Parliament to be afforded the opportunity to exercise a greater degree of scrutiny over regulations made under clause 8 than is the case for orders under section 17(5).

Clause 10(2)(c): Power to make regulations to specify a class or description of persons who are to be subject to a duty to report incidents

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by Statutory Instrument</i>
<i>Parliamentary Procedure:</i>	<i>Negative Resolution</i>

Context and Purpose

36. Clause 10(1) of the Bill creates a duty to notify the Secretary of State as soon as possible when a person knows or has reason to suspect that a notifiable incident has occurred or is occurring.
37. For these purposes, a notifiable incident is defined in clause 10(3) as one that affects the person's relevant assets or activities in such a way as to create a significant risk of, or cause, disruption to or a failure of the continuity of supply of crude oil based fuel, or an adverse effect on downstream oil sector resilience. Examples of the sort of incidents that are intended to be notifiable under clauses 10(1) and (3) include a loss of operational capability due to accident, malicious attack or planned maintenance, a failure of fuel to meet specification, a threat of industrial action, and a risk of or actual insolvency.
38. Clause 10(2) specifies the classes of person who are subject to this reporting duty. Clauses 10(2)(a) and (b) do so by reference to capacity thresholds for a person's business or facility.
39. Clause 10(2)(c) creates a power for the Secretary of State to specify further classes or descriptions of person who are subject to this duty to notify. Clause 10(7) provides that where Regulations are made pursuant to this power, they can also specify the meaning of the "relevant activities or assets" in relation to such a person for the purposes of determining whether or not an incident is notifiable under clause 10(3).
40. Failure to comply with the duty imposed by clause 10(1), or a subsequent notice under clause 10(4) requiring information, is an offence under clause 11. Clause 13 makes further provision in relation to disclosure of information provided pursuant to regulations made under clause 10(1).

41. The Government is the only body that has an overarching view of the entire downstream oil supply system. Individual companies and operators understand their own infrastructure and supply chains but, due to commercial sensitivity and competition law constraints, companies are unable to disclose information to each other on supply capabilities or contingency planning. In order to understand the resilience of the system as it changes with time and to plan to mitigate any risks to the continuity of fuel supplies to end users, the Government requires timely notification of any material incidents or risks to the operation of major downstream operators. Information collected will provide a foundation for the identification of risk and consideration for action under the other Bill measures.
42. The provisions of the Competition Act 1998 that prohibit information sharing or coordinated action between industry participants may be disapplied under the Competition Act 1998 (Public Policy Exclusion) Order 2012 when the Downstream Oil Industry Protocol is activated by the Secretary of State. However, that Protocol can only be activated when there is a significant disruption or a threat of a significant disruption to the normal supply of fuel, and only for the duration of that disruption or threat. It therefore does not allow information sharing or coordinated action in normal circumstances, or allow the Secretary of State to obtain an industry-wide understanding of incidents that have occurred in the way envisaged by clause 10(1).

Justification for Taking the Power

43. While the Bill sets out the two main categories of downstream operators that must comply with the reporting requirements, it is conceivable that there are or will be other downstream operators that do not meet the thresholds, but may be involved in incidents which pose a risk to the continuity of supply of crude oil.
44. The Government therefore thinks it is appropriate to provide the power to add to the list, should the Government consider that different categories of downstream operators should be subject to the reporting requirements. This will also allow the Government to tailor the reporting requirement to future changes in the structure of the market, for example as the market adapts to a decreased demand for road transport fuels as the UK transitions to net zero emissions. It will also allow, for example, the incident reporting duty to be imposed on entities or assets that may be (or become) of particular regional significance, for example for the supply of heating oil in Scotland or the supply of aviation fuel in the South West.

Justification for Procedure Selected

45. The Government considers the negative procedure is appropriate for regulations made under clause 10(2)(c). Incidents which pose a serious risk to continuity of supply are likely to be rare, and the burden on any new downstream operator caught by regulations are likely to be small.

Clause 12(1): Power to make regulations requiring a person to provide information to the Secretary of State, at specified intervals, relating to the person's relevant activities or assets

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by Statutory Instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative Resolution</i>

Context and Purpose

46. Clause 9 provides that the Secretary of State may by notice in writing require a person to whom that clause applies to provide information relating to that person's relevant activities or assets. Notices under clause 9 may only be given for the purpose of maintaining or improving downstream oil sector resilience.²
47. Clause 12(1) creates a power for the Secretary of State to make regulations requiring a person to provide information to the Secretary of State at intervals specified in the regulations. This power can only be exercised for the purpose of maintaining or improving downstream oil sector resilience (clause 12(2)), and only in relation to the person's relevant activities and assets (as defined in clause 1(4)). It may only be exercised in respect of persons whose business or facility meets the capacity thresholds in clause 12(3).
48. Clause 12(5) enables the Secretary of State to provide in the regulations that any person who without reasonable excuse fails to comply with the requirement imposed commits an offence.
49. As set out at paragraph 61, the Government is the only body that has an overarching view of the entire downstream oil supply system. The Government currently monitors the downstream oil supply chain through regular dialogue with industry, through information submitted by industry on a voluntary basis, and through compulsory statistical submissions (e.g. under the Statistics of Trade Act 1947). However, the existing powers are insufficient to provide the full range of information necessary. Without a complete, accurate and holistic view of the downstream oil system, there is a risk that Government can neither identify critical elements of the fuels supply system nor support industry in responding to a disruption in an effective and timely manner – leading to disruption that could have been avoided if better managed.

Justification for Taking the Power

50. The power in clause 9 to require information by written notice is to be exercised by written notice, meaning that it can only be exercised in relation to individual, specified persons. The power in clause 12, which is to be exercised by regulations rather than written notice, allows the Secretary of State to impose a similar requirement on a group or class of persons. This will allow the Government to gather information across the sector, or particular parts of the sector, to obtain the sort of complete, accurate and holistic view referred to at paragraph 69 above.
51. The Government believes taking this power is justified because the nature of the information required to allow it to make the judgements involved is technical in nature and is likely to change with time as the market evolves. A power to make regulations will therefore allow the requirements to be refined to ensure that the information required meets the Government's needs without imposing an unnecessary burden on the industry.

Justification for Procedure Selected

52. The Government considers the affirmative procedure is appropriate for regulations made under clause 12(1). Although the power concerns administrative and procedural

² As this power is to be exercised by written notice, it can only be exercised in relation to individual, specified persons. It is therefore considered to be a power of an executive, rather than legislative, nature, and is not addressed further in this memorandum.

matters under a clear framework set out in the Bill and the cost to industry of supplying this information is likely to be small, Parliament is likely to want to scrutinise the proportionality of imposing an offence and the level of penalty for non-compliance.

Clause 15(5): Power to make regulations making provision about applications for consent to make a qualifying acquisition

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by Statutory Instrument</i>
<i>Parliamentary Procedure:</i>	<i>Negative Resolution</i>

Context and Purpose

53. Government aims to protect the UK's most critical assets and services, whilst ensuring our economy remains open for investment. The Government already has powers to intervene in certain acquisitions and mergers on national security grounds under the National Security and Investment Act 2021 and Part 3 of the Enterprise Act 2002.
54. The downstream oil sector is largely unregulated, and unlike other sectors with critical national infrastructure there is no licensing regime that would enable Government to intervene in any changes of ownership or control falling outside the National Security and Investment Act 2021 (which will fully commence on 04 January 2022) and Enterprise Act 2002 regimes on the grounds that the acquirer's lack of technical competence or financial stability raises a risk to the resilience of fuel supply. This means that there may be no opportunity for the Secretary of State to scrutinise or assess the deal as increasing risks to security of supply. There has been an observed trend over in recent years that assets are being transferred from long-established oil companies which are well funded with major portfolios of assets to smaller, new entrants whose financial resources and operational experience are thinner. The best-known example of this is the collapse of Petroplus, as owners of Coryton refinery, in 2012. The Government is concerned that this trend may continue as the economics of the downstream sector come under more pressure during the transition to Net Zero.
55. Part 3 of the Bill therefore seeks to create a regime specifically to protect the downstream oil sector from influence or control by persons who are not financially sound and technically competent. Clause 15(1) provides that no person may make a "qualifying acquisition" without the written consent of the Secretary of State. In order to obtain the necessary consent, an application must be made to the Secretary of State.
56. Clause 15(2) specifies certain information that must be contained in an application. Clause 15(3) requires an application to be made at least 13 weeks before the proposed date of the acquisition, and clause 15(4) requires the Secretary of State to acknowledge receipt of an application within five working days of receipt. The period in which the Secretary of State must decide an application is set out in clause 19. Clauses 20 and 21 provide that the Secretary of State may seek further information about an application from the applicant and third parties respectively.
57. Clause 15(5) creates a power for the Secretary of State to make provision by regulations about applications for consent for acquisitions. These regulations will prescribe the form and contents of applications, the fees and any further time limits, to ensure that the application process functions as efficiently as possible.

Justification for Taking the Power

58. Regulations made under clause 15(5) are not intended to set or amend the Government's policy in respect of acquisitions, but only to address the practical implementation of that policy.
59. The Government's view is that detailed regulations will need to be in place to provide applicants with sufficient guidance on the preparation of and procedure for applications. Given the level of detail that will be required, the Government considers that the form, content and procedure for consent applications are matters better suited to being set out in delegated legislation than in primary legislation.
60. The Secretary of State may also need to amend these provisions over time, if operational experience reveals that different or additional information is required in order to decide whether to grant consent, for example. The most practicable way for detailed requirements to be prescribed, while allowing them to be changed to ensure the legislation reflects good practice and the most up-to-date practical considerations, in a timely way, is secondary legislation.

Justification for Procedure Selected

61. The primary legislation already sets out the principal information that will be required in applications, as well as the overall timetable for applications and the ability for the Secretary of State to seek further information from the applicant or third parties. These core elements of the policy therefore cannot be amended by the regulations, which will instead deal with more detailed procedural and practical arrangements.
62. In the circumstances, the Government considers that the negative resolution procedure will provide Parliament with sufficient oversight, while also providing the Secretary of State with the flexibility needed to amend the required contents of a validation application (within the parameters set by the primary legislation) in a timely manner.

Clause 23(1): Statement about how functions in relation to applications for consent to make qualifying acquisitions will be exercised

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Statement</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative Resolution</i>

Context and Purpose

63. As set out above in relation to clause 15, Part 3 of the Bill seeks to create a regime to protect the downstream oil sector from influence or control by persons who are not financially sound and technically competent. Clause 15(1) provides that no person may make a "qualifying acquisition" without the written consent of the Secretary of State. In order to obtain the necessary consent, an application must be made to the Secretary of State.
64. Clause 22 makes provision for how such applications are to be decided by the Secretary of State, including factors that must be taken into account and the range of possible outcomes. Clause 22(2) specifies two matters that the Secretary of State must consider in reaching any decision in respect of an application: first, any risks that

the acquisition poses to the financial stability of the relevant business; and second, any risk that the acquisition will adversely affect the availability and effective use of technical resources that are required for the sound management of the relevant business. Clause 22(3) then specifies two further matters to which the Secretary of State must have regard: the desirability of securing continuity of supply of crude oil based fuel; and the likely influence that the applicant will have on the relevant business.

65. Clause 23(1) requires the Secretary of State to issue a statement about how it is proposed that the powers under clause 22 will be exercised, and clause 23(4) provides that this statement must be published. The statement must specify factors to be taken into account in assessing risks that the acquisition poses to the financial stability of the relevant business, and risks that the acquisition will adversely affect the availability and effective use of technical resources that are required for the sound management of the relevant business (clause 23(2)). The procedures for consultation and Parliamentary approval of the statement are set out in clause 24.
66. The purpose of the statement is to provide additional predictability and transparency in relation to the Secretary of State's decision-making in relation to acquisitions. In particular, it is intended to assist actors and their advisers to foresee which acquisitions are more likely to be approved, either with or without conditions. The statement is also intended to assist parties in understanding the risks and factors that will be relevant for the Secretary of State's decision, and therefore potential measures that may pre-emptively address or mitigate any concerns the Secretary of State may have if consent were to be granted.
67. A similar power to issue a statement about the exercise of a power relating to transactions is set out in section 3 of the National Security and Investment Act 2021, in respect of the Secretary of State's power to "call in" transactions giving rise to national security concerns. However, that statement relates to the exercise of the call-in power, rather than the subsequent decision as to whether or not to approve the transaction, and does not limit the power to give a call-in notice.

Justification for Taking the Power

68. Due to the wide-ranging and evolving nature of risks to financial stability and technical competence in the downstream oil sector, a broad power to approve or prevent acquisitions of significant businesses or facilities is necessary in order for the Secretary of State to be able to ensure security of supply. The primary legislation specifies, at clauses 22(2) and (3) certain matters that the Secretary of State must consider and to which the Secretary of State must have regard in reaching a decision. Beyond those, the Government considers that it would not be appropriate to further limit the scope of the decision-making power in relation to acquisitions, for example by setting out an exhaustive list of factors that must be taken into account in making such decisions in the Bill or in delegated legislation.
69. As above, the purpose of the statement is not to prescribe the procedure or basis for the Secretary of State's decisions in its entirety, or to fetter the Secretary of State's discretion, but rather to provide additional predictability and transparency for industry participants. This sort of detailed guidance is better suited to being contained in the envisaged statement than in the Bill. In addition, market conditions, technical capabilities and the Secretary of State's focus are all likely to change over time, so it seems more appropriate to set out how the Secretary of State expects to exercise the decision-making powers in the statement, which is likely to be more straightforward to amend, than in the Bill.

Justification for Procedure Selected

70. The restriction on qualifying acquisitions has the effect of preventing a person from acquiring qualifying property, and the corresponding effect of preventing that sale or transfer of that property. Whilst the Government believes it is in the public interest for acquisitions only to proceed where there has been an assessment of the risks to financial stability of the relevant business and any adverse effect on the availability and effective deployment of the required technical resources for ensuring the sound management of that business, it acknowledges that this is interference in what would otherwise be a private transaction.
71. The Government therefore considers that the statement made under clause 23(1) should be subject to the draft affirmative procedure to provide appropriate parliamentary oversight of the proposed exercise of the Secretary of State's decision-making power.
72. By way of comparison, the power to issue a statement under section 3 of the National Security and Investment Act 2021 was subject to the negative resolution procedure. However, that statement did not place any limits on the exercise of the call-in powers under that Act, and related to matters of national security. No such considerations apply to the statement under clause 23 of the present Bill, and accordingly the Government considers that a greater degree of Parliamentary scrutiny is appropriate in this case.

Clause 36(3)(b): Power to make regulations specifying description of actions to be taken in an enforcement undertaking

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by Statutory Instrument</i>
<i>Parliamentary Procedure:</i>	<i>Affirmative Resolution</i>

Context and Purpose

73. The Bill creates a number of new offences, including failure to comply with a resilience direction given under clause 3, contravention of the information requirements in clauses 9 and 10, offences relating to the restrictions on acquisitions and making false statements when providing information to the Secretary of State under various provisions of the Bill. The Bill also provides that further offences may be created by regulations made under clauses 8 and 12.
74. As an alternative enforcement mechanism to these offences, the Bill also provides for a range of civil sanctions to be imposed. One of these alternatives is set out in clause 36, which provides for people who the Secretary of State has reasonable grounds to suspect have committed one of the specified offences to offer the Secretary of State an enforcement undertaking. Under clauses 36(3)(a) and (4), such enforcement undertakings can be undertakings to take, within a specified period, action for the purposes of securing that the offence does not continue or recur, or securing that the position is, so far as possible, restored to what it would have been had the offence not been committed, or to benefit any person affected by the offence. Alternatively, clause 36(3)(b) allows the Secretary of State, by regulations, to specify a description of the action that must be taken under an enforcement undertaking. Part 2 of Schedule 2 makes further provision about enforcement undertakings, including the relevant procedure, compliance certificates and appeals.

75. If the Secretary of State accepts an enforcement undertaking and the person performs the required action, that person may not be convicted for that offence in respect of the relevant act or omission, and the Secretary of State cannot impose any discretionary requirement under clause 34. Under paragraph 9 of Schedule 2 to the Bill, the Secretary of State must publish a procedure for entering into enforcement undertakings, and must consult any persons he considers appropriate before publication (or subsequent revision).³
76. As set out above, the purpose of this Bill is to maintain the resilience and continuity of the UK's supply of crude oil based fuels. The Government therefore wants to adopt an approach which allows steps to be taken towards meeting that objective even in the event that downstream oil sector operators fail to comply. Enforcement undertakings will allow the businesses involved to come forward with proposed remedies to non-compliance and, subject to the undertaking being accepted by the Secretary of State, avoid prosecution but continue with providing a resilient supply of fuel to the market and ultimately consumers.

Justification for Taking the Power

77. The Government considers that regulations under clause 36(3)(b) are an appropriate mechanism of formalising Enforcement Undertakings in a transparent fashion.
78. The Government's intention is to have the civil sanctions in the Bill stick as closely as possible to the model contained in Part 3 of the Regulatory Enforcement and Sanctions Act 2008 ("RESA"). The provisions of clause 36 are therefore intended to broadly follow the scheme for the use of enforcement undertakings as part of a civil sanctions regime set out in section 50 of RESA. Section 50(3)(d) of RESA provides that the action specified in an enforcement undertaking can be an action of a prescribed description. Regulations under clause 36(3)(b) of the Bill are intended to set out such a prescribed description.

Justification for Procedure Selected

79. The Government proposes that this power should be subject to the affirmative procedure because it enables Parliament to scrutinise and approve regulations that specify which actions may be performed in order for a person to avoid being prosecuted or subject to other discretionary requirements. The Government believes it is appropriate that Parliament can expressly approve that the actions described, if performed, are appropriate to have the consequence of removing the possibility of conviction.

³ The Government does not consider paragraph 9 of Schedule 2 to the Bill to delegate any legislative powers to the Secretary of State. In order to carry out the Secretary of State's executive functions arising from statutory scheme for enforcement undertakings set out in the Bill, the Secretary of State will have to put in place an appropriate procedure in any event. These provisions of the Bill simply set a framework for the Secretary of State to do so, and require publication of the procedure. The Government therefore considers that no Parliamentary scrutiny of this procedure is necessary, and these provisions are not addressed further in this memorandum. A similar power to publish a procedure for entering into enforcement undertakings, with no Parliamentary scrutiny, was provided for by paragraph 9(1) of Schedule 11 to the Health and Social Care Act 2012.

Clause 38(1): Guidance as to enforcement of offences

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

80. Clause 38(1) provides that the Secretary of State must publish guidance as to the sanctions to which a person who commits an offence under this Bill may be liable; the action which the Secretary of State may take to enforce offences under this Bill; and the circumstances in which the Secretary of State is likely to take any such action. The Secretary of State must consult such persons as he considers appropriate before publishing any guidance (or revised guidance). There is no express requirement that the Secretary of State have regard to this guidance when taking action to enforce offences under the Bill.
81. The downstream oil industry has a relatively strong compliance culture for such issues as Health and Safety and Environmental regulations and the Government hopes to see this transferred to the measures embodied in this Bill. Most of these measures will only be employed by exception, however the supply of oil-based fuels is vital to our economy and way of life and the Government are committed to ensuring a secure and reliable energy supply.

Justification for Taking the Power

82. It is necessary for the downstream oil sector to understand the consequences of non-compliance with any of the measures in the Bill and the circumstances in which action is likely to be taken. This will further encourage compliance and deter non-compliance which might jeopardise the supply of crude oil based fuels to the consumers, industries and services which rely on them.
83. As noted above at paragraph 98, the Government's intention is to have the civil sanctions in the Bill stick as closely as possible to the model contained in Part 3 of RESA. Section 64 of RESA provides that where power is conferred on a regulator under or by virtue of Part 3 of RESA to impose a civil sanction in relation to an offence, the regulator must prepare and publish guidance about how the offence is enforced. Clause 38 of the Bill is intended to impose a similar obligation to prepare and publish guidance in respect of the civil sanctions under the Bill.

Justification for Procedure Selected

84. It is Government policy that guidance should not be used to circumvent the legal rules set out in primary and secondary legislation, which are themselves subject to parliamentary scrutiny. Government accepts that, if the policy is to create rules that must be followed, this should be achieved using regulations subject to parliamentary scrutiny and not guidance. The purpose of guidance is to aid policy implementation by supplementing legal rules.
85. In this case, guidance issued under clause 38 will not set rules, but will instead assist the industry in understanding and achieving the regulator's desired outcomes. The Government therefore does not consider that any parliamentary procedure is required for this guidance. Unlike the statement under clause 23 in respect of qualifying acquisitions, the Government does not consider that the subject matter requires

Parliament to scrutinise a document that is intended purely to provide further information to the downstream oil sector.

86. Guidance prepared and published pursuant to section 64 of RESA is similarly not subject to any parliamentary procedure.

Clause 39(1): Guidance as to use of civil sanctions

Power conferred on: Secretary of State

Power exercised by: Guidance

Parliamentary Procedure: None

Context and Purpose

87. Similarly to clause 38, clause 39(1) requires the Secretary of State to publish guidance. This guidance is to be about the Secretary of State's use of discretionary requirements and enforcement undertakings (see clauses 34 to 37 and Schedule 2). Clause 39(2) requires the guidance to include certain information in relation to each type of discretionary requirement such as the circumstances in which requirement is likely to be imposed and the rights to make representations, objections and appeal. The Secretary of State will be under a duty to revise the guidance where appropriate, consult any persons he thinks appropriate prior to publication, and the Secretary of State is to have to regard to the guidance when exercising his functions under clauses 34 to 37 and Schedule 2.
88. The context for this guidance is the same as that for the guidance under clause 38 (see paragraph 101 above).

Justification for Taking the Power

89. The justification for this power is the same as that for the power to publish guidance under clause 38 (see paragraphs 102 and 103 above). Section 65 of RESA sets out a similar obligation to publish guidance as to the use of civil sanctions under Part 3 of that Act.

Justification for Procedure Selected

90. As for the power to publish guidance under clause 38, the Government does not consider that any parliamentary procedure is required for this guidance (see paragraph 105 above).
91. Guidance prepared and published pursuant to section 65 of RESA is similarly not subject to any parliamentary procedure.

Clause 41(1): Power to make regulations amending or modifying the thresholds specified in certain provisions of the Bill

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative Resolution

Context and Purpose

92. The Bill contains a number of thresholds that determine, in part, the group of persons who are subject to duties imposed by the Bill and / or in relation to whom powers under the Bill may be exercised. These include capacity thresholds for the persons in relation to whom: resilience directions under clause 3 can be given; regulations under clause 8 can be made; notices under clause 9 requiring information can be given; and regulations requiring information under clause 12 can be made. Similarly, the scope of the duty to report incidents under clause 10 and the “qualifying assets” under clause 17 that are subject to the acquisition control provisions of the Bill are determined, in part, by reference to specified capacity thresholds. These thresholds were consulted on and the values in the clauses take into account the responses to that consultation.
93. Clause 41(1) provides that the Secretary of State may by regulations amend or modify these thresholds.
94. The context for this power is that the sector will face an unprecedented level of change over the next few decades as the UK moves to a Net Zero economy. The impact for the downstream oil sector will be driven by the rate of adoption of low-carbon transport alternatives, and this is currently uncertain and will depend on the market responses. It is important that the legislative framework can respond to this changing risk landscape.

Justification for Taking the Power

95. The power will enable the amendment of provisions within the Bill. As such it is a ‘Henry VIII’ power. The Government consider it necessary for two reasons. The first is that thresholds may need to change over time to reflect changes within the sector. The second is that, although the thresholds were the subject of consultation and further stakeholder engagement after publication of the draft Bill, it may be necessary for them to change over time after the Bill comes into force as the sector evolves, particularly as the UK transitions towards Net Zero. Experience of operating the provisions in practice may inform the Government that certain thresholds require changing. It may be that the thresholds unnecessarily capture downstream oil sector operators or that the thresholds do not capture sufficient downstream oil sector operators, and this power provides the flexibility to address that.
96. Although this constitutes a ‘Henry VIII’ power, it is limited to amending specified provisions of the primary legislation that creates the power and cannot be used more widely to amend other primary legislation.

Justification for Procedure Selected

97. The Government considers that regulations made under clause 41 should be subject to the draft affirmative procedure to provide appropriate parliamentary oversight of proposed amendments to the scope of the various duties and/or powers under the Bill. For example, lowering the thresholds will increase the number of persons caught by the provisions of the Bill or regulations made underneath it, so the Government considers it appropriate that Parliament has the opportunity to scrutinise and debate whether any revised thresholds are set at the right level.
98. This procedure is doubly appropriate given that these regulations may amend primary legislation, i.e. the Bill itself.

Clause 44(2): Power to make regulations in relation to commencement and transitional, transitory or saving provisions

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercised by:</i>	<i>Regulations made by Statutory Instrument</i>
<i>Parliamentary Procedure:</i>	<i>None</i>

Context and Purpose

99. Clause 44(2) contains a standard power for the Secretary of State to bring provisions of the Bill into force by commencement regulations. Clauses 42 (which deals with regulations made under the Bill) and 43 (interpretation) come into force on the day on which the Bill is passed. Not all of the remaining provisions in the Bill will need to be in force immediately on the Bill being passed. For this reason, a power is taken in subsections (2) and (3)(a) to enable the Secretary of State to appoint, by regulations, a day (or different days) for the coming into force of the remainder of the provisions contained in the Bill. Pursuant to subsection (3)(b) these regulations may also make transitional, transitory or saving provision.

Justification for Taking the Power

100. Some parts of the Bill may need to be commenced earlier than others. For that reason, where commencement is not already expressly provided for by clause 44(2), this power will enable the Secretary of State to make regulations to commence particular provisions for when they are needed. It is possible that further transitional, transitory or saving provision will be needed when Bill provisions are brought into force, for example in relation to the acquisition control provisions in Part 3.

Justification for Procedure Selected

101. As is usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions of the Bill to be commenced by enacting them; commencement by regulations enables the provisions to be brought into force at the appropriate time.

Department for Business, Energy and Industrial Strategy

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