



BRIEFING

Further advice on Minimum Stockholding Obligations and exemptions

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|---------------------------------|---------------|-------------------------|----------------------|
| Date: | 10 April 2026 | Priority: | Urgent |
| Security classification: | Restricted | Tracking number: | BRIEFING-REQ-0029861 |

| | Action sought | Deadline |
|---|-----------------------|---------------|
| Hon Nicola Willis Minister of Finance | Note the advice below | 14 April 2026 |
| Hon Shane Jones Associate Minister for Energy | | |
| Hon Chris Bishop Associate Minister of Finance | | |
| Hon Simeon Brown Minister for Energy | | |
| Hon David Seymour Associate Minister of Finance | | |

| Contact for telephone discussion (if required) | | | |
|--|---------------------------------------|----------------------------|-------------|
| Name | Position | Telephone | 1st contact |
| Scott Russell | Manager, Fuel Supply Policy | Privacy of natural persons | ✓ |
| Ben Smith | Principal Advisor, Fuel Supply Policy | - | |

| The following departments/agencies have been consulted |
|--|
| |

- Minister's office to complete:
- | | | |
|--|---|------------------------------------|
| <input type="checkbox"/> Noted | <input type="checkbox"/> Approved | <input type="checkbox"/> Declined |
| <input type="checkbox"/> Overtaken by Events | <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen |
| | <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn |

Comments



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Purpose

This briefing explains the Minimum Stockholding Obligations for fuel importers, and further advice on the process for granting exemptions from these obligations, officials' initial advice on when and how exemptions could be considered and granted, and key trade-offs. It also includes legal advice prepared by the Crown Law Office.

Executive summary

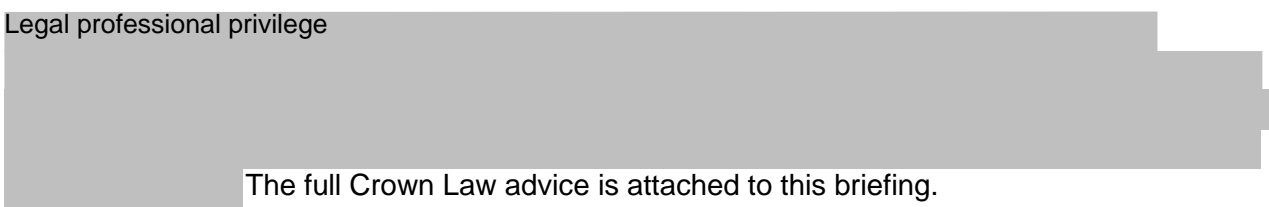
Ministers have requested advice on the Crown's ability to enforce the Minimum Stockholding Obligation (MSO) and how MSO exemptions work, including any key legal considerations.

In a major supply disruption, fuel importers may face temporary MSO shortfalls even when acting in good faith and taking all practicable steps to comply. Non-compliance may result in court-imposed pecuniary penalties if MBIE takes enforcement action.

The Fuel Industry Act 2020 provides the Minister for Energy an exemption power for limited and exceptional circumstances beyond a fuel importer's reasonable control that have prevented, or are likely to prevent, compliance. Exemptions allow a person subject to the MSO regime to not comply with some, or all, of their stockholding obligations. They may be time-limited and subject to conditions. The delegation to decide exemptions sits with the Associate Minister for Energy, and decisions may be subject to judicial review.

Declining an exemption may encourage fuel importers to hold back supply from the domestic market to avoid breaching their MSO levels. This could potentially delay supply to the domestic market. Time-limited, conditional exemptions (where the statutory criteria are met) can provide a transparent mechanism to manage unavoidable temporary shortfalls.

Legal professional privilege



The full Crown Law advice is attached to this briefing.

Next week, officials will provide further advice on the relationship between MSO exemptions and other tools the Government could use to address a shortage (such as deploying a strategic reserve). This advice will consider potential supply disruption scenarios, and consequently how much additional supply might be needed as insurance against physical shortages.

Recommended action

The Ministry of Business, Innovation and Employment (the Ministry) recommends that you:

- a **note** that the Associate Minister for Energy has the delegation and power to grant exemptions from the Minimum Stockholding Obligations (MSO) in exceptional circumstances beyond the reasonable control of the person subject to the MSO regime

Noted

- b **note** that exemption requests should be considered on a case-by-case basis, with consideration of all factors required by the Fuel Industry Act 2020

Noted

- c Legal professional privilege [Redacted]

Noted

- d **note** MBIE will provide advice to the Minister to support ministerial decision-making on requests for exemptions, should an application be made.

Noted

- e **note** officials will provide further advice next week on the relationship between MSO exemptions and other tools the Government could use to address a shortage (such as deploying a strategic reserve)

Noted

Recommended actions continued on next page

f **note** officials also preparing advice Confidential advice to Government



Noted

Privacy of natural persons

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Buildings, Resources and Markets, MBIE
10 / 04 / 2026

Hon Nicola Willis
Minister for Finance
..... / /

Hon Shane Jones
Associate Minister for Energy
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Hon Simeon Brown
Minister for Energy
..... / /

Hon Chris Bishop
Associate Minister of Finance
..... / /

Hon David Seymour
Associate Minister of Finance
..... / /

Background

1. The Fuel Industry Act 2020 (the Act) and Fuel Industry Regulations 2021 set out Minimum Stockholding Obligations (MSOs) for fuel importers who have access to bulk storage facilities. The purpose of the MSOs is to ensure that New Zealand has enough petrol, diesel and jet fuel available in the event of a major disruption to our fuel supply.
2. The minimum amount of fuel a fuel importer must hold depends on the type of fuel they supply:
 - a. 28 days' cover of petrol
 - b. 24 days' cover of jet fuel, and
 - c. 21 days' cover of diesel.
3. The minimum stockholding obligation is based on the average daily demand or consumption for the 12-month period ending four months before the compliance period begins. This fuel must be held in a bulk storage facility or be on a ship in our Exclusive Economic Zone that is destined to a New Zealand port.
4. Fuel importers may also meet their obligations through entitlement agreements that provide a contractual right to draw fuel from another party's stocks. However, these arrangements may not be available or effective during a broad-based supply disruption.

Exemptions from the MSO

Why exemptions may be sought during disruption

5. The MSO regime is intended to support fuel availability and resilience in a crisis. Current pressures on international fuel supply chains create a risk that physical fuel supply into New Zealand could decline.
6. In these circumstances, some fuel importers may be unable to meet their MSO requirements even where they are acting in good faith and taking all practicable steps to comply. The exemption power provides a mechanism for the Minister to set clear, public parameters for any temporary non-compliance, and a pathway back to compliance.
7. Where supply is constrained through exceptional circumstances beyond the reasonable control of the importer, requiring strict compliance in all circumstances may inadvertently encourage fuel importers to stop supplying fuel stocks to the domestic market to avoid falling below MSO levels. This could happen at a time when essential services, critical infrastructure and wider economic activity may require assured supply.

How exemptions can be structured (scope, time limits and conditions)

8. The Act provides the Minister for Energy (with power currently delegated to the Associate Minister for Energy) with the ability to grant exemptions where exceptional circumstances beyond a fuel importer's reasonable control have prevented, or are likely to prevent, compliance with the MSO – that is, genuine supply constraints rather than ordinary commercial pressures.

9. The Act also provides examples of the types of circumstances that might be considered exceptional including natural disasters that affect fuel storage facilities and a crisis that has affected international shipping routes. In practice, exemptions provide a targeted, time-limited mechanism to allow (including subject to conditions) a person subject to the MSO regime to not comply with some, or all, of their stockholding obligation where the statutory criteria are met.
10. Exemptions can be tailored by fuel type, fuel importer, volume, and duration. They can also include conditions. These need to be tailored to the individual exemption, but possibilities could include, enhanced reporting, review points, replenishment plans and timeframes, and staged restoration targets once supply conditions stabilise. Time limits and review points may be appropriate to manage uncertainty about how long disruption conditions may persist.

Overseas comparator (Australia)

11. Australia used a similar approach (albeit through a different legal mechanism) by temporarily reducing its MSO levels for diesel and petrol, conditional on each company providing a written plan setting out how it will prioritise supply to regional customers and regional distributors. The reduction only applies while companies are taking reasonable steps to implement those plans and is currently set to end on 30 June 2026. Our current thinking is that we would not impose this type of condition, as other mechanisms under the National Fuel Plan (including the Petroleum Demand Restraint Act) may be more suitable for ensuring demand is being met.

Legal considerations [Legally Privileged]

12. In summary, Crown Law advise that:

Legal professional privilege



13. The full advice from Crown Law has been appended to this briefing.

Compliance approach and available tools

14. MBIE's compliance approach is staged and proportionate. In practice this means MBIE will typically start with engagement and guidance and, if needed, escalate to more formal tools where the circumstances and behaviour warrant it. Under this approach, MBIE would need to decide whether escalation to court-based enforcement is appropriate in the circumstances, if an importer does not comply with their MSO obligations.
15. If an exemption is not granted but a fuel importer nevertheless breaches the MSO, the Crown's main compliance tools are:
 - a. **Court action and pecuniary penalties:** The Crown may initiate court proceedings where an importer has breached their MSO, and this may result in a pecuniary penalty for the importer, which can only be imposed by the High Court on application from MBIE. The maximum penalty for an organisation is the greater of:
 - i. \$5 million
 - ii. Three times the value of any commercial gain resulting from the contravention (if this can be ascertained by the court), or
 - iii. 10 per cent of the importer's turnover over the period of the contravention (if the commercial gain cannot be readily ascertained).
 - b. **Enforceable undertakings:** An enforceable undertaking is a formal commitment given by a fuel importer to MBIE that can set out the actions they will take, and the timeframe, to return to compliance where immediate compliance is not possible. Enforceable undertakings committing to a compliance plan can be useful where compliance will be restored over a longer period. Enforceable undertakings must be offered by the importer and accepted by MBIE.
16. An example of how the penalties regime could apply is included in the Annex Two.

Next steps

17. We are preparing further advice to help guide the Minister's decision-making on when it may be appropriate to draw on MSO stocks via exemptions versus using other measures such as the proposed strategic reserve. This advice will consider potential supply disruption scenarios, and consequently how much additional supply might be needed as insurance against physical shortages.

18. We are also preparing advice Confidential advice to Government
19. In anticipation of potential exemption requests, MBIE has undertaken preparatory work to support timely and well-informed ministerial decision-making. We are also considering what conditions may be desirable to attach to an exemption (if granted), including conditions that support transparency, and a pathway back to compliance.
20. If Ministers receive direct requests for exemptions from the MSO requirements, applicants should be referred to MBIE's website which sets out the process they should follow. This will ensure that requests are assessed consistently and are supported by appropriate advice.
21. Once granted, exemptions are subject to presentation requirements to the House of Representatives (as they are secondary legislation) and they must be published in the *Gazette*. The Minister's reasons for granting an exemption must also be published.

Annexes

Annex One: Crown Law advice

Annex Two: Considerations for exemptions required under the Fuel Industry Act 2020

Annex Three: Penalties for non-compliance

Annex One: Crown Law Advice

Annex Two: Considerations for exemptions required under the Fuel Industry Act 2020

When the Minister is deciding whether to grant an exemption, the Act requires the Minister to be satisfied:

1. exceptional circumstances beyond the reasonable control of the fuel importer have prevented, or are likely to prevent, compliance with the MSO requirements that apply to the fuel importer
2. there is a good reason for granting the exemption that outweighs the interest of the public in having the MSO met, and
3. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

Before deciding whether to grant an exemption, the Minister must also consider:

1. The impact of the circumstances on fuel imports and storage capacity.
2. The duration of the circumstances.
3. The level of control of the fuel importer over the circumstances.
4. The time required to achieve compliance with the MSO.
5. The impact on fuel resilience in the regions.

Annex Three: Penalties for non-compliance

How MSO pecuniary penalties are calculated under the Fuel Industry Act 2020

A fuel importer's MSO requires it to hold 21 days' diesel cover but due to an unexpected disruption outside its reasonable control its holdings fall below the MSO for five days and no exemption applies.

For a pecuniary penalty to be imposed, MBIE must apply to the High Court, and the High Court may order the importer to pay a civil penalty only if it is satisfied that the stockholding obligation has been contravened.

The maximum penalty for a corporate fuel importer (per act or omission) is the **greater of**:

- \$5 million
- three times the commercial gain resulting from the contravention (if the gain can be readily ascertained and the High Court is satisfied the contravention occurred in the course of producing a commercial gain), or
- 10 per cent of turnover for each accounting period in which the contravention occurred (if the gain cannot be readily ascertained).

If an importer's turnover for the relevant accounting period is \$600 million and a readily ascertainable gain from the shortfall is \$2 million (for example, avoided costs or commercial advantage), the "three times gain" limb would be \$6 million, so the maximum penalty the court could impose is \$6 million. Because this is more than \$5 million, the maximum applicable penalty would be \$6 million.

If the gain cannot be readily ascertained, 10 per cent of turnover would be \$60 million, which would be the relevant maximum. Because this is more than \$5 million, the maximum applicable penalty would be \$60 million.

In deciding what (if any) penalty is appropriate, the High Court must have regard to factors that include:

- the circumstances of the contravention (for example, intentional, inadvertent or negligent)
- any previous similar contraventions, and
- any other relevant matter.

In a scenario where the shortfall is temporary, not deliberate, and driven by circumstances outside the importer's reasonable control, those factors would generally be relevant to the court's assessment and could support an outcome materially below the maximum.