

Fulfilment House Due Diligence Scheme

Summary of Responses

December 2016

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1. Executive Summary

Fulfilment House Due Diligence Scheme

1.1 At Budget 2016 HM Revenue and Customs (HMRC) published its estimate that overseas traders selling goods online to UK customers are costing the Exchequer £1-1.5 billion of VAT a year. At the same time, the government signalled its commitment to combatting this abuse by announcing a comprehensive package of measures to tackle it.

1.2 A new Fulfilment House Due Diligence Scheme is at the heart of these plans. The objective of the scheme, which will open for registrations in 2018, is to ensure that fulfilment houses play their part in tackling the abuse. Fulfilment houses that are part of this scheme will be required to perform proper due diligence on the goods they fulfil and their overseas clients. The scheme will protect revenue and level the playing-field for legitimate UK businesses.

1.3 In anticipation of the scheme's implementation, some fulfilment houses are already seeking better data about the businesses that they trade with and educating them on their tax obligations in the UK. Evidence suggests that the package of measures is already driving compliance in this sector, with increases in applications for UK VAT registrations from overseas suppliers.

1.4 Responses to the consultation have helped shape the scheme and have allowed the government to take account of the impacts of the various elements of the proposal and limit as far as possible the burden the new scheme places on existing fulfilment businesses. Respondents will see that many aspects of the proposals have been modified significantly to take account of the views expressed. These changes will have no impact on the scheme's effectiveness.

1.5 HMRC will continue to work closely with stakeholders to ensure the scheme is effective and straightforward.

2. Introduction

2.1 At Budget 2016, the government announced the introduction of the Fulfilment House Due Diligence Scheme from 2018 – as part of a package of measures designed to combat growing abuse in trading in goods via online marketplaces.

2.2 The abuse is enabled by misdeclaration and undervaluation of goods imported from outside the EU, and sometimes the abuse of reliefs that are designed to facilitate trade. This is followed by the onward sale of the goods to customers in the UK taking place without the correct amounts of UK VAT being paid.

2.3 This is a growing problem which affects competition and is unfair to legitimate and compliant UK businesses. It also has a significant impact on Exchequer receipts.

2.4 Registering fulfilment houses and requiring certain due diligence and record keeping is part of the solution. Many overseas suppliers that sell to UK customers online make use of UK-based fulfilment houses to store, pack and/or deliver their online orders in order to compete on speed with UK businesses.

2.5 A due diligence scheme will make it more difficult for non-compliant suppliers to trade in the UK and will enable HMRC to identify and tackle them more easily.

2.6 A consultation was published on the scope and shape of the new scheme on 16 March 2016. The government invited views on the proposed scheme, to ensure it addressed the abuse identified while minimising burdens for affected businesses. It also explored ways to deter goods being delivered to non-registered fulfilment houses. The consultation closed on 30 June.

2.7 The government is grateful to the 31 respondents who provided written responses and the stakeholders who shared their views at various face-to-face meetings. The responses enabled HMRC to build up a better picture of the sector and its working practices.

2.8 Chapter 3 of this document provides the Government Response and sets out more detail on how HMRC plans to take this work forward.

2.9 Chapters 4-7 of this document sets out the questions posed in the consultation document and summarises the responses given.

3. Government Response

3.1 This Chapter sets out the government's response to the points raised in the consultation.

3.2 Having carefully considered the responses to this consultation and other relevant factors, the government has determined its approach on a range of issues concerning the scope and shape of the new Fulfilment House Due Diligence Scheme.

3.3 Taking account of the legitimate concerns that have been raised and useful suggestions offered, the government has modified many aspects of its original proposal to minimise the impact of the new scheme on legitimate businesses. In particular, it has listened to the concerns expressed around the expected record-keeping and due diligence requirements.

3.4 In addition, the government has decided at this stage not to proceed with a proposal to require those delivering to and from fulfilment houses to check an online register. The background to this is set out in more detail below.

3.5 It remains convinced that a Fulfilment House Due Diligence Scheme will protect revenue by disrupting non-compliance by overseas suppliers selling goods via online marketplaces. It will also level the playing-field for legitimate and compliant businesses in the UK. The scheme will be legislated for in Finance Bill 2017 and HMRC commences consultation on draft legislation alongside the publication of this document.

Definition of a Fulfilment House

3.6 The definition that will be used to identify those businesses in scope was the subject of consultation and meetings with external stakeholders. The government accepts that the proposed definition was too broad and would have brought within the scope of the scheme businesses other than fulfilment businesses (for example, the Express Industry). The definition has therefore been modified to take account of stakeholders' views and a draft clause has been published for a period of further consultation.

Features of a fulfilment house

Businesses must be operating a fulfilment business, meaning:

- Some or all of the storage and fulfilment premises of the business must be located in the UK
- The storage and fulfilment premises must wholly or partly contain 'relevant' goods
- The fulfilment business arranges for the customer to receive the relevant goods (either by initiating delivery or allowing collection)

Relevant goods are goods that:

- have been imported into the EU;
- are in free circulation;
- at the point when they arrive at the fulfilment business's premises in the UK, do not normally have a delivery address beyond the address of the fulfilment business; and
- are owned by a business located outside of the EU until such time as they are sold to the customer

Relevant goods are described in the draft legislation as third country goods.

3.7 Having explored stakeholders' views on a wider definition, that included businesses fulfilling their own orders of imported goods, the government accepts that this would bring into scope too many businesses that are not central to the abuse. It has therefore decided that such businesses should not be within scope of the scheme.

Timelines for registration under the scheme

3.8 In the consultation, HMRC set out a proposed timeline as follows:

- 1 April 2018 - 30 June 2018: registration window opens for existing fulfilment businesses
- 1 July 2018 - 31 March 2019: verification window for HMRC
- New businesses must register 45 calendar days in advance of the date they commence trading as a registrable fulfilment business
- 1 April 2019 - the date from which fulfilment houses need to feature on the register to trade as a fulfilment house

3.9 The government considered concerns from some respondents that the 12-month verification window for HMRC to check existing businesses was too long. However, to allow HMRC a reasonable time-frame to verify applications, and learning from our experience of similar schemes, the government intends to allow until 31 March 2019 for verification of existing fulfilment businesses.

Registration information

3.10 Respondents to the consultation generally supported the types of general information that fulfilment houses will have to provide when applying to join the register. The information set out in the consultation document will form the basis of the registration requirements of the scheme. HMRC will publish guidance about this next year.

Registration verification - Fit and Proper Standards

3.11 HMRC set out the types of criteria against which they will check applications - known as 'fit and proper standards'.

3.12 The consultation document explained that such checks are likely to include a detailed verification of the information on the application form, checks against other systems and registers (including criminal records, credit reference agencies, other government departments and agencies) and visits to premises.

3.13 Taking account of the comments from respondents, the standards have been modified. The government agrees that it is important to give certainty to business on the criteria that HMRC will use to verify applications. It will therefore set out those criteria in guidance - which will be broadly along the following lines:

1. Key persons involved in the business (for example, directors, owners etc) have not been previously involved in revenue non-compliance or fraud
2. There are no connections between the business, or key persons involved in the business, with other known non-compliant or fraudulent businesses
3. Key persons involved in the businesses have no unspent criminal convictions which are relevant - for example, offences involving dishonesty or links to organised criminal activity
4. The application is accurate and complete and there has been no attempt to deceive
5. There has not been negligent or persistent failure to comply with any HMRC record-keeping requirements
6. The business has no outstanding unmanaged HMRC debts

3.14 The evaluation against the fit and proper standards will also include a check that the fulfilment house is prepared or preparing to comply with the record-keeping and due diligence requirements from the commencement of registration.

3.15 HMRC will continue to work with stakeholders to ensure that this aspect of the scheme is proportionate and encourages rather than deters applications.

Record-keeping and due diligence

3.16 HMRC met with external stakeholders and looked carefully at the responses to the consultation on these important aspects of the scheme. Taking account of the feedback received, the government accepts that some of the proposed requirements would impose a significant additional burden on business. In particular, fulfilment houses told HMRC that they were unable to assess the values of the goods they store.

3.17 As a consequence, the government has decided to reduce the record keeping requirements and due diligence checks to the minimum that is needed for the scheme to be effective. Fulfilment houses will still be required to maintain certain records and undertake key checks on their overseas clients and the goods they store. Draft legislation will be published for consultation in early 2017. This is a fundamental aspect of the scheme. The revised record-keeping requirements work in conjunction with the due diligence checks fulfilment houses undertake, and are set out below:

3.18 Records in respect of all 'relevant goods' that are/have been held in fulfilment house:

- The name and address of the owner of the goods
- The import entry number (in its full format, including date)
- The VAT registration certificate of the owner of the goods
- Delivery documents for onward supply to customer

3.19 HMRC will publish guidance for fulfilment houses about how to undertake 'Know Your Customer' checks on their overseas clients and to keep up to date documentary evidence about those checks. Good standards will include demonstrating to HMRC that fulfilment houses have objectively assessed the risks of abuse in the supply chain and have procedures in place to take timely and effective action where a risk of abuse is identified. HMRC has been assured that many fulfilment houses already do this.

3.20 The government proposes to combine this with a mandatory requirement for the fulfilment house to evidence the following due diligence checks:

- the fulfilment house has satisfied itself that its customers' names/addresses are legitimate
- the fulfilment house has checked that each of its customers has provided a valid VAT registration number (VRN)
- the fulfilment house can identify what goods are stored in its warehouse (including quantities and description) and the owner of those goods
- for each of its overseas clients, the fulfilment house has issued a Notice prescribed by HMRC - setting out the obligations of the overseas client in registering and accounting for VAT and duty, which also warns their overseas client that if it is discovered that the correct amount of UK VAT and duty was not declared on goods sold via their fulfilment house, they will cease to do business with them - and be able to evidence that they have sent it

Penalties and powers

3.21 It is essential that the new Fulfilment House Due Diligence Scheme is underpinned by an effective penalties and powers regime to ensure compliance with its rules. The government has listened to stakeholders' views and is mindful that penalties should be proportionate (in particular, not disproportionate for smaller businesses), and that criminal sanctions are used only where absolutely necessary.

Powers

3.22 The government will rely on existing powers under the Finance Act 1994 for many aspects of the scheme, which already apply to fulfilment house businesses. Sections 20 to 24 of the Finance Act 1994 (c. 9) set out various powers and penalties that apply to any person carrying out certain customs activities. These are defined in section 20. They include importation and exportation and the buying, selling or dealing in goods liable to a duty of customs and 'handling or storing them'. HMRC will utilise these existing powers, which include the power of entry to fulfilment business premises (section 24).

3.23 The government will legislate for the power to make Regulations and these will require registered businesses to keep records in relation to the relevant goods they hold and carry out due diligence checks on their overseas clients. Registered businesses will also be required to issue their overseas clients with a standard notice setting out their VAT and duty obligations. This will ensure that fulfilment businesses have controls in place to identify what goods are stored on their premises and retain details of the overseas owners of such goods.

Penalties

3.24 The government has published draft primary legislation which provides for a penalty for carrying on a fulfilment business without approval.

3.25 Other penalties for the scheme will be set out in secondary legislation and will be published for consultation in early 2017.

The penalties will apply to:

- failure to notify and late notification of requirement to register for Fulfilment House Due Diligence Scheme
- failure to notify changes in registration details
- failure to keep/produce accurate records required under the scheme
- failure to carry out appropriate due diligence checks or to take appropriate action from those checks
- handling relevant goods while unregistered for the Fulfilment House Due Diligence Scheme

3.26 These will be consistent with HMRC's wider penalties regime, and will fit with HMRC's five penalty principles. There will be a level of discretion to allow for warning letters for certain breaches and mitigation for civil financial penalties, to take account of the impact on smaller businesses and the level of co-operation by the fulfilment house.

3.27 In the most serious cases, for example, where a fulfilment house has been found to have repeatedly broken the rules, HMRC may remove a business from the register. A fulfilment house not on the register will be unable to trade.

Criminal penalty

3.28 It is important that there should be a meaningful deterrent if a business operates a fulfilment business while not on the register. The government is therefore considering a single criminal offence where a person knows or has reasonable grounds to suspect that they carry on a third country goods fulfilment business without approval. The person liable for the offence will be the person upon whom the obligation to register applies.

Forfeiture and restoration

3.29 In addition to the above penalties, the government has published draft legislation providing for goods, stored in fulfilment houses that have not been approved or that are operating contrary to approval, to be liable to forfeiture. All

imported goods that are stored/held in the possession of an unapproved person, including all such goods that were in their possession but which have since been moved to any other place, will be forfeited.

3.30 Clearly, this measure may have an impact on innocent owners of goods who may be unaware of the unapproved status of the fulfilment house in which their goods are stored. HMRC will consider requests for the restoration of seized goods and will take all relevant factors into account.

3.31 These provisions do not affect current forfeiture powers for goods on which tax or duty is found to have been under-declared.

Draft secondary legislation

3.32 The government will publish the draft secondary legislation for consultation early in 2017.

Appeals and reviews

3.33 A business may ask HMRC to undertake an independent review before it takes its case to tribunal.

3.34 A review request would need to be made in writing within 30 days of the date of the decision letter, and the review normally completed within 45 days. The review decision can be appealed by writing to the Tribunal within 30 days of the review decision.

De-registration and striking off register

3.35 Respondents to the consultation were generally content with the proposals around de-registration and circumstances where HMRC might revoke a registration.

3.36 Accordingly, the government will proceed with legislation in line with the proposals outlined in the consultation. Where a fulfilment house intends to cease trading in relevant goods – the business must notify HMRC at least 30 calendar days in advance of that date and make arrangements for the disposal of relevant goods before the cessation date.

In line with the consultation, HMRC will be able to revoke approval if:

- it has evidence that the business is involved in fraudulent activity
- new information indicates that a business no longer meets the fit and proper standards
- a business persistently fails to meet requirements of the scheme e.g. not fulfilling due diligence obligations
- a business appears to be dormant and HMRC has not received notification of cancellation.

HMRC will notify businesses in writing if they intend to revoke an approval giving reasons. This decision will be an appealable matter.

De minimis or incidental supplies

3.37 The consultation considered whether there should be an exclusion from registration for small businesses. Most respondents gave no opinion but a small number felt this would introduce complexity, encourage the splitting of larger businesses to avoid the registration requirements, create uncertainty and be unfair for business above the threshold. The government is mindful of minimising burdens on small businesses. However, a one-off registration with minimal record-keeping and due diligence requirements are not likely to be disproportionate even for a small business.

3.38 Therefore it is not proposed to exclude any businesses from the requirements of the scheme. HMRC will monitor the impact on small or micro businesses to ensure that complying with the scheme is not disproportionate to the benefit it achieves.

Online register: deliveries to and from fulfilment houses

3.39 The consultation proposed that Fast Parcel Operators (FPOs), Freight Agents, Transport/Logistics businesses and others in the Express Industry may be required to check an online register of registered fulfilment houses prior to making any deliveries. If the fulfilment house was not on the register then the delivery should not take place, to further disrupt the fraud by stopping goods from reaching fulfilment houses that did not meet the required standards, and giving fulfilment houses a greater incentive to register.

3.40 The government has listened carefully to the views of stakeholders on this subject and has taken account of the concerns of the sector. It agrees with respondents that this aspect of the proposal would lead to practical difficulties, in particular how the sector would determine whether a consignment was destined for - or being collected from - a fulfilment house within the scope of the scheme. In addition, it recognises that, at this stage, it would not be practical to expect delivery businesses to check an online register for each consignment address. The proposal would also present difficulties in establishing a policy around what should happen to the goods if a business refuses to handle/deliver them. The government has decided not to proceed with this aspect of the proposal.

3.41 However, HMRC will publish and maintain an online register of approved fulfilment houses and will encourage businesses who deal with unregistered fulfilment houses to report them to HMRC. An online register can still play a part in helping to promote compliance and will be taken forward as part of the scheme.

4. About you

Responses to Questions 1 - 18

Businesses, organisations and individuals may have different perspectives and the consultation set out a series of questions to help understand the context of the answers given to all the questions in the following sections.

Q1 - Are you:

... a UK fulfilment house or business providing fulfilment services:	
- On behalf of third parties	5
- On your own behalf	
- A mixture of the above	2
a freight forwarder	9
a Fast Parcel Operator (FPO) (Express Industry)	5
a transport logistics operator - please state	5
a customs agent or intermediary	5
another UK business - please state	
an overseas supplier of goods using a UK fulfilment house/centre	
a trade representative body/organisation	4
a member of the public	
other - please state	1

There were 21 responses to this question - some of the respondents identified themselves within more than one category.

Q2 - If you are in business, where is your business established?

- UK (please state if in the Isle of Man)
- Other EU - please state
- Non EU - please state

There were 18 responses to this question and, again, some respondents answered in more than one category. 18 businesses were established in the UK, 4 in another EU Member State and 2 outside of the EU.

Q3 - If you are in business, how many staff do you employ across the UK?

Fewer than 10	1
10 - 100	3
101 - 500	5

Fulfilment houses

Q4 - What is the annual turnover of your business?

This ranged from between £1.5m to several hundred million.

Q5 - Approximately how many orders did you fulfil on behalf of other businesses over the past 12 months? Please state the value of those goods (if known).

This ranged from between 40,000 to the high millions, although it is worth pointing out that this question was answered by freight forwarders as well as fulfilment businesses, so this doesn't necessarily reflect fulfilment orders. With only one exception, all respondents advised that they were unable to place a value on the goods that they handled.

Q6 - Do you import and/or sell your own goods?

- a) **Approximately how many orders did you fulfil on your own behalf over the past 12 months?**
- b) **What was the value of those goods?**

80% of those who answered this question stated that they do not import and sell their own goods. Only one respondent gave an answer to a) and b).

Q7 - How many UK-based premises do you provide fulfilment services from?

This ranged from between 1 and 10 premises.

Q8 - What is the square footage of your fulfilment premises?

This ranged from between 30,000 to the low millions of square footage.

Q9 - Please provide any other details about how your fulfilment business operates that might help us understand your business model.

Responses to this question helped HMRC build a better picture about the types of business models of UK fulfilment houses across the UK.

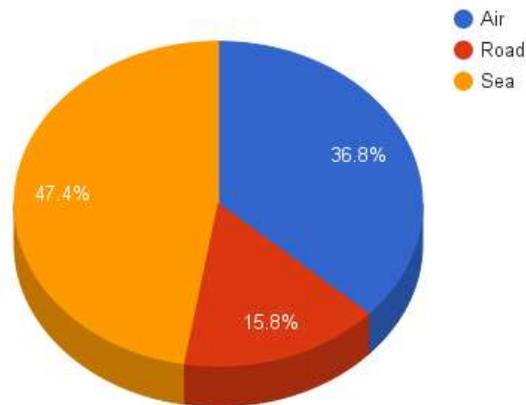
There is a varied picture - some respondents gave information such as the number of customers that they provide fulfilment services for, whether they are UK or overseas based customers, and more information on how their operation works. The information gathered here has helped HMRC shape the scheme and take account of the sector's business practices.

Q10 - What type of consignment are deliveries into your premises generally? e.g. large containers, parcels etc.

This was a fairly even split, although some businesses did advise they receive more than one type of consignment:

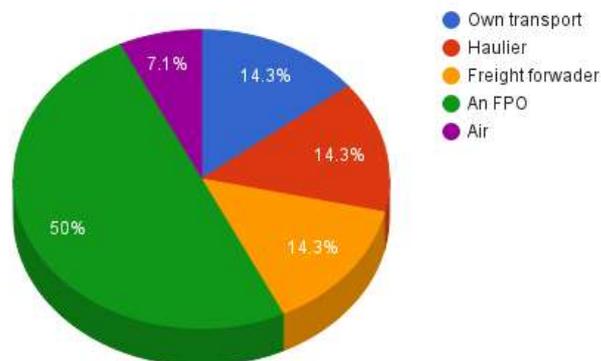
- Parcels - 37.5%
- Containers - 31.2%
- Road (Pallet) - 31.3%

Q11 - How do these normally arrive into the UK? e.g. by air or sea freight



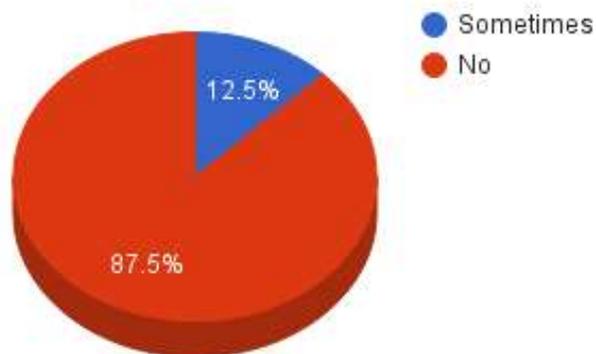
Q12 - What type of business do you use for delivering the consignments of goods to and from your fulfilment house/centre? e.g. freight forwarder, FPO

Some respondents indicated that they use more than one method of delivering goods, with FPOs (Fast Parcel Operators) being the largest.

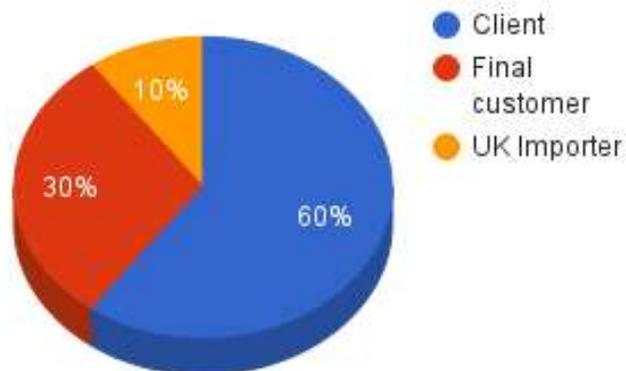


Q13 - If you are handling goods on behalf of a third-party supplier:

a) are you the importer of the goods you handle?

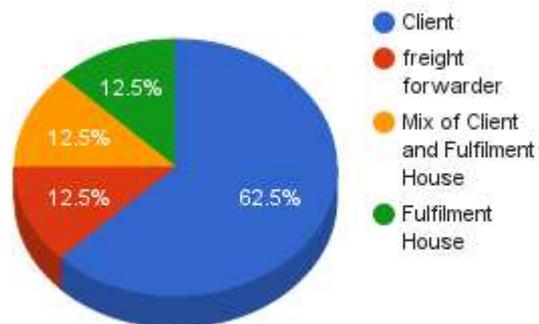


b) who has title to the goods (at the time you handle them)? e.g. your overseas client, the final customer



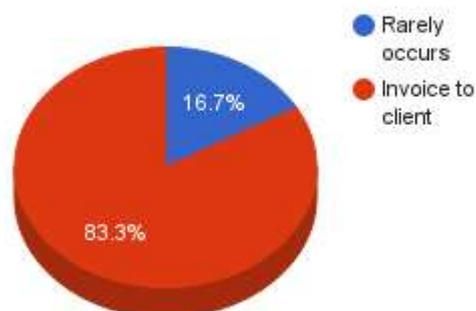
c) who pays the import VAT and duty on these goods? e.g. you, your overseas client, another UK business

The data collected from respondents here was clear that in 75% of cases, the fulfilment houses do not pay the VAT and duty on the goods they handle



d) if you pay the import VAT and duty on behalf of someone else, how is this reimbursed to you and from whom?

Of those who responded to this question, the majority (83.3%) said they recuperate their outlay by invoicing their client directly.



Customs agents and intermediaries, transport and logistics operators

Q14 - Are you currently aware if you are delivering to, or importing goods destined for, a fulfilment house?

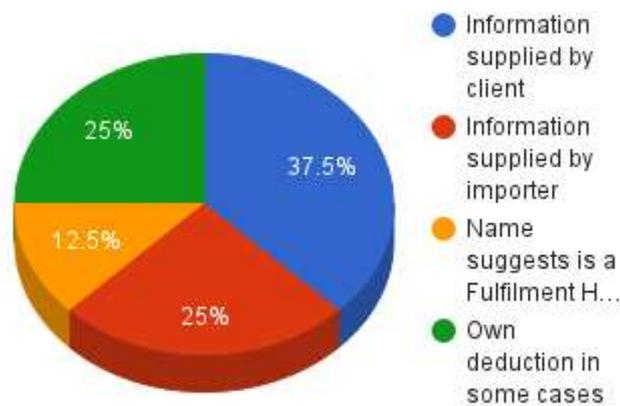
If yes, please go to question **Q15**

If no, please go to question **Q16**

Just under half of the respondents advised that they were currently aware when they were delivering or importing goods for a fulfilment house. A further 27% said no and the remainder advised sometimes or mostly.

Q15 - If you can identify when you deliver to, or import goods for, a fulfilment house:

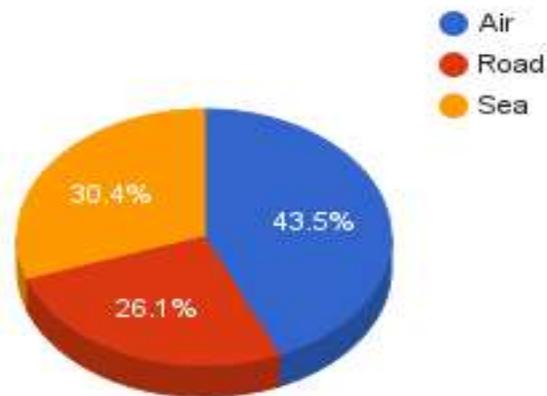
a) how do you currently identify goods which are destined for delivery to a fulfilment house?



b) what percentage of your business relates specifically to handling freight destined for fulfilment houses?

This ranged from unknown to 10%

c) how do these goods normally arrive into the UK? e.g. by air or sea freight



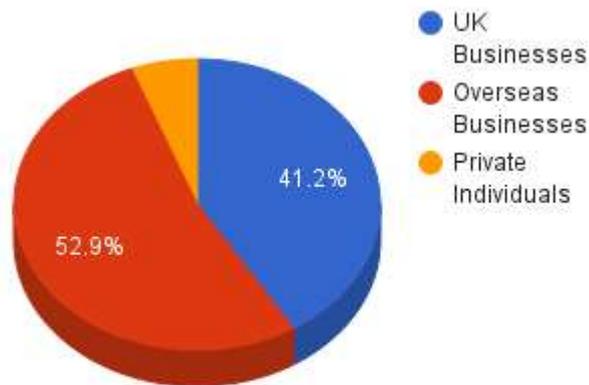
d) what type of consignment are your fulfilment house deliveries/imports? e.g. large containers, parcels etc.

Container deliveries accounted for over 50%, although some businesses did advise that they receive more than 1 type of consignment:

- Containers - 54%
- Parcels - 38%
- Road (Pallet) - 8%

**e) who engages your services for delivering/importing these types of goods?
e.g. overseas business, UK business etc.**

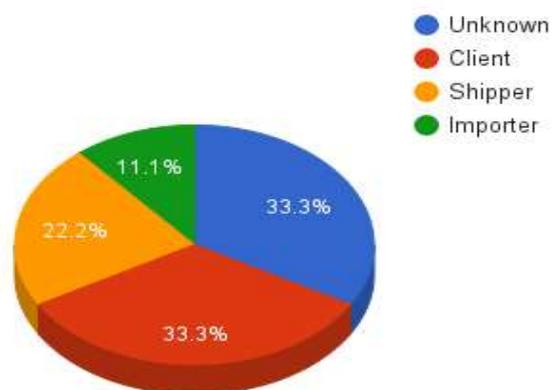
Overseas businesses account for just over 50%, with UK businesses at 41%



f) if you are handling goods on behalf of a third-party supplier:

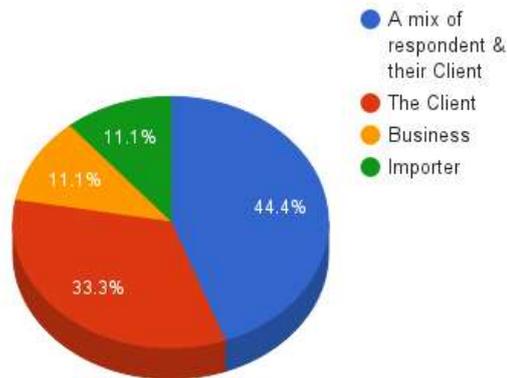
(i) who has title to the goods (at the time you handle them) e.g the overseas business, the final customer?

A fairly even split between unknown, the client and shipper/importer.



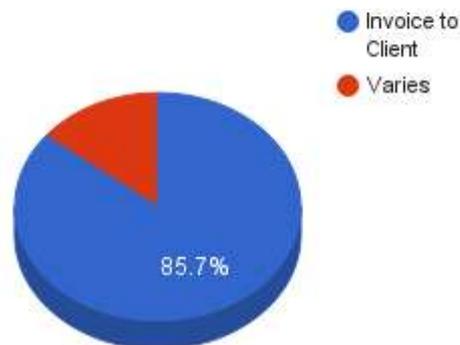
(ii) who pays the import VAT and duty on these goods? e.g. you, the overseas business, another UK business?

The respondents suggested that in some cases they pay the import VAT and Duty, other times their client may pay it and sometimes it varies. A couple of responses used other terms such as 'Business' and 'Importer' - it is unclear in this context whether these terms relate to an overseas business or another party.



(iii) if you pay the import VAT and duty on behalf of someone else, how is this reimbursed to you and from whom?

The majority of respondents (85.7%) recuperate their outlay by invoicing their client directly



Q16 - If you are not aware whether you are delivering to, or importing goods destined for, a fulfilment house:

a) what do you know about where you are delivering the goods?

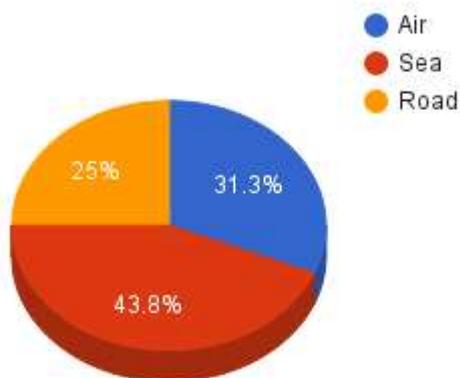
Respondents advised that they know order details, name and address. In some cases also a telephone number, VAT registration number and import declaration information.

b) what type of consignment generally are the goods you handle? e.g. large containers, parcels etc.

This was a fairly even split, again, some businesses did advise that they receive more than one type of consignment.

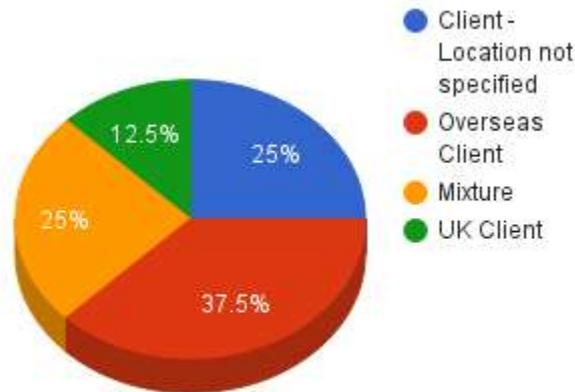
Containers - 36.4%
Parcels - 36.4%
Road (Pallet) -27.3%

c) how do these normally arrive into the UK? e.g. by air or sea freight



d) who engages your services for delivering/importing the consignments of goods? e.g. overseas business, UK business etc.

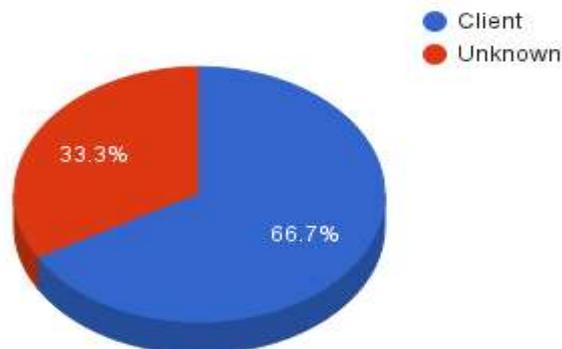
Carriers indicated that they were engaged by overseas clients in the majority of cases although in some cases (25%) they were unaware of their clients' location.



e) if you are handling goods on behalf of a third-party supplier:

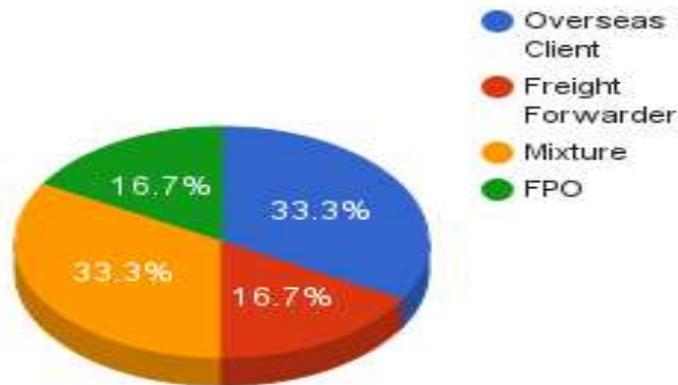
(i) who has title to the goods (at the time you handle them)? e.g. the overseas business, the final customer

The carrier's client has title to the goods in the majority of cases. In the remaining cases, title to the goods is unknown.



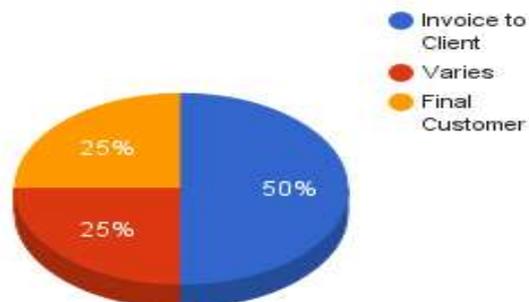
(ii) who pays the import VAT and duty on these goods? e.g. you, the overseas business, another UK business

The biggest percentages here were either a mixture of the business/their client or the overseas client directly, followed by FPO and Freight Forwarder.

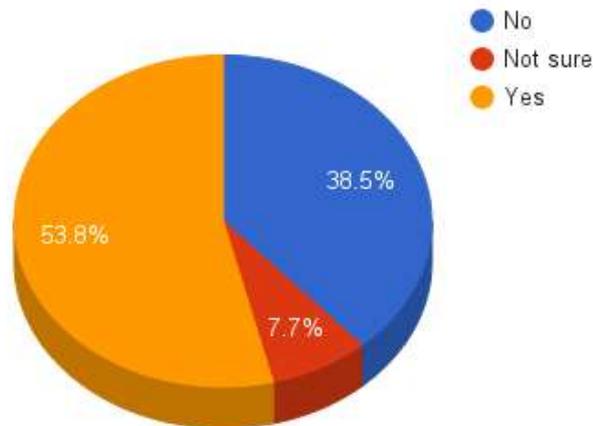


(iii) if you pay the import VAT and duty on behalf of someone else, how is this reimbursed to you and from whom?

Half the respondents indicated that the import duty and VAT is reimbursed by invoicing the client, a quarter invoiced to the final customer and a quarter of cases vary.

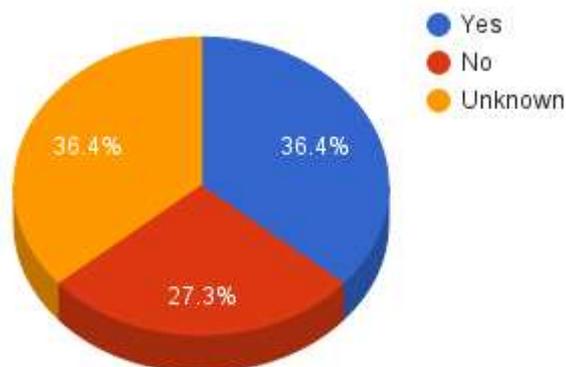


Q17 - Do you also supply your own fulfilment house services?



Q18 - Do you collect goods from fulfilment houses for onward delivery?

This was a fairly even split between yes and no, with just over a third advising it was unknown.



- **How do you currently identify whether you are collecting goods from a fulfilment house?**

There were four responses to this question, and three quarters advised that they cannot identify a fulfilment house.

5. Due Diligence Scheme

Responses to Questions 19 - 49

Who will have to register under the Fulfilment House Due Diligence Scheme?

HMRC consulted on the following working definition of a fulfilment house:

A fulfilment house is a business that provides' services of storage, breaking bulk, unpacking, re-packing and making (or arranging) subsequent delivery to its clients' customers of goods imported from outside the EU which have been cleared for customs purposes.

Respondents were asked:

Q19 - Do you think your business will fall into this definition?

Q20 - Do you think this definition:

- a) captures all the particular features of a fulfilment house (if not, please specify)?
- b) makes it clear what sort of business is required to be registered?

Q21 - Do you have an alternative/preferred definition (if so please provide)?

The majority of respondents felt that they or their members would be considered a fulfilment house under the working definition.

Whilst some respondents agreed that the definition was clear, some felt that it was too broad and pulled in other businesses unintentionally. It was also suggested that it did not capture other activities by fulfilment houses such as advertising and mailshot services. Two respondents offered alternative definitions which HMRC has taken into consideration - further information is in the Government Response (Chapter 3).

Q22 - By this definition, approximately how many fulfilment houses do you estimate operate in the UK?

With a single exception this was answered as unknown. A single response suggested that the working definition might affect many businesses.

Widening the definition

In developing this scheme, it was important that the abuse identified was not driven elsewhere, for example, an overseas supplier decides to fulfil its own orders in the UK to avoid the compliance rules of the scheme. With this in mind, HMRC invited views on a widened definition - to include businesses that fulfil their own orders. The full widened definition read:

A fulfilment house is a business that provides services of storage, breaking bulk, unpacking, re-packing and making (or arranging) subsequent delivery to its clients' customers of goods imported from outside the EU which have been cleared for customs purposes. Fulfilment houses for this purpose include entities supplying to customers and customers of associated businesses on their own behalf.

Q23 - Do you think your business will fall into this definition?

Half of the 14 respondents felt that they would fall into this wider definition. 14% did not think they would, whilst the remaining third thought they would possibly be drawn in but that the definition was unclear.

Q24 - Do you think this wider definition will help prevent the abuse being driven to own-goods fulfilment centres and warehouses?

The responses to this question were fairly evenly split with just over half of respondents suggesting that it would stop the abuse being driven to own-goods fulfilment centres and warehouses. The rest of the respondents either said 'no' or were unsure.

Q25 - Do you think it is necessary to widen the definition to include own-goods fulfilment centres and warehouses? Please give your reasons.

Only 36% felt that it was necessary to widen the definition with the remainder either saying no or unsure.

Q26 - By this wider definition, approximately how many fulfilment houses do you estimate operate in the UK?

With a single exception this was answered as unknown. A single response suggested that the working definition might affect many businesses.

Exclusions from requirement to register

Q27 - Do you think there is a need to exclude certain businesses from registration or certain activities that trigger the requirement to register?

There were only 6 responses to this question with two thirds of respondents saying that there is no need for exclusions from the requirement to register.

If so,

a) please give your reasons

A higher number responded to this question, with comments such as:

- Authorised Economic Operator (AEO) businesses should be excluded
- if the scheme is targeting overseas business then there is no need to include UK and EU fulfilment houses

- the scheme should target businesses responsible for the tax evasion and not legitimate businesses
- small and micro businesses below the VAT registration threshold should be *excluded*
- conversely, that small and micro businesses below the VAT registration threshold should be *included* to avoid disaggregation of business to avoid registration for the scheme

b) what form could an exclusion from registration take? (Please provide detail - if, for example, your preference is for a *de minimis* limit at what level should it be set?)

There were 7 responses to this question with comments made such as:

- exclude businesses that have order-fulfilment simply as part of their business
- be clear this only applies to companies whose business is selling a fulfilment service
- exclude businesses subject to customs or excise warehousing regime as they are already registered and subject to warehouse controls
- exclude businesses providing fulfilment services to overseas customers
- exclude businesses where providing fulfilment services is an incidental part of what they do
- importers with fewer than 50 shipments within an accounting period
- commodity based

Due diligence conditions

The consultation set out that the register of fulfilment houses will contain only businesses that have shown they can comply with the due diligence conditions and record-keeping requirements to be set out under the scheme. The detail of the conditions would be determined following consultation.

It was envisaged that the conditions would look similar to those set out below. That businesses must show that it has:

- objectively assessed the risks of fraud and abuse within the supply chain
- put in place reasonable and proportionate checks in day-to-day trading to identify transactions that may lead to abuse or involve goods on which VAT and customs duty may have been evaded
- have procedures in place to take timely and effective mitigating action where a risk of fraud or abuse is identified
- documented the checks it intends to carry out and have appropriate management governance in place to make sure that these are, and continue to be, carried out as intended.

The precise checks required of a registered fulfilment house would be determined following the consultation but may include:

- checking whether the overseas supplier (on whose behalf you are fulfilling orders) provides a valid VAT registration number (if applicable) and an EORI (Economic Operator Registration and Identification) number
- checking goods held/handled against customs declarations and online sales information to ensure the goods are as described and valued appropriately
- examining the customs declarations to ensure that goods claiming a relief are entitled to that relief. E.g. Low Value Consignment Relief

Q28 - Are the checks outlined above straightforward or difficult to comply with? Please explain.

Whilst it was felt that some of the checks were straightforward, the overriding message was that it was very difficult (if not impossible) for businesses to check that imported goods have been described and valued correctly.

The main points made were that the majority of these businesses:

- will not be the consignee of the goods
- will have no access to the clearance paperwork
- have no information of how much a customer has paid for the imported goods
- will not know the value at which they had been declared
- will not have the expertise to determine if the value is correct
- will not be aware of the end sale price to make any kind of assessment as to whether they have been correctly valued for VAT purposes

Q29 - Do you think any other checks should be undertaken?

More than half of the respondents felt that other checks could be carried out. Comments included:

- Check the overseas supplier has a declared accountant /fiscal company representing them in the UK
- Should be able to rely on customs registration numbers i.e. if they have an EORI or VAT registration number as part of existing HMRC processes

There were also identified checks that could be undertaken by others, but not relevant to this scheme.

Q30 - If you are a fulfilment house or a fulfilment centre, do you already undertake any checks similar to those outlined above?

Two thirds of the nine responses to this question advised that they do undertake checks similar to those outlined in the consultation document, including their own due diligence with new customers (such as using reputable freight forwarders, checking VAT & EORI numbers) and the stringent record keeping and processes associated with customs warehousing.

Record-keeping conditions

The consultation set out the possible types of record-keeping requirements a registered fulfilment house might have to keep would be determined following the consultation but might include:

- copies of delivery documents
- a stock control system which should include values
- details of any premises
- name, addresses and any VAT registration numbers of overseas suppliers on whose behalf the fulfilment house handles goods
- date goods arrive, import and retail values etc.
- accounting records for the fulfilment house services to the overseas supplier (the fulfilment house's client)
- customs declaration

and that any record that is required to be kept is preserved for a specified period and maintained on site.

Q31 - Are the record-keeping requirements outlined above straightforward or difficult to comply with? Please explain.

Fewer than half of the 14 responses to this question suggested that they would find the record-keeping requirements straightforward. The remaining respondents felt the record-keeping requirements outlined in the consultation would be difficult to comply with, citing reasons such as:

- too onerous
- would need full invoices, whereas currently only see a delivery note
- increased administration costs
- smaller businesses will have a disproportionately higher burden
- values of goods are unknown and no way of checking them
- already keep records required under EU 'know your customer' requirements

Q32 - Are there any solutions (for example, electronic stock systems) already within the sector to match goods stored to specific import declarations and/or online sales? If yes, please explain.

With the exception of one response, there were no specifically named systems, although some of the respondents said that their own existing Warehouse Management Systems could offer traceability and match goods to specific import declarations and online sales if needed.

Q33 - Do you think any other records should be maintained?

The overwhelming response to this question was 'no'.

Q34 - If you are a fulfilment house, do you already maintain records similar to those outlined above? Please describe.

Most of the respondents commented that they do hold some similar records to those listed such as names and addresses of overseas clients, records of incoming and outgoing shipments, date of receipt, the orders picked and records of dispatch.

However it was also commented by some that they do not hold any records of customs declarations, invoices used at import, or values of goods. The point was made that these were not required for the effective running of the business.

Online applications for registration

HMRC has committed to developing an online due diligence scheme which will be simple to use and accessible. Registration will open in 2018. HMRC set out that it would allow a period for existing fulfilment houses to submit applications to register with a further period for HMRC to verify those applications.

The consultation set out the sort of information that might be required at the point of registration, and included:

- trading name & legal entity name
- details of any partners
- VAT and Company Registration numbers, if registered
- Self Assessment or Corporation Tax Unique Taxpayer Reference (UTR) number, if registered
- addresses
- estimated/actual annual turnover
- who goods or services are provided to (e.g. private individuals, overseas or UK businesses)
- how many trading premises are operated and their addresses
- business names, addresses and VAT numbers (if registered) of overseas suppliers for whom orders for imported goods are fulfilled
- whether or not goods are imported to fulfil orders on own behalf

Q35 - Should HMRC gather any further information upon registration?

Of only 9 people responding to this question, less than half felt that no further information should be requested. Remaining comments included:

- ascertain whether the fulfilment house will be transacting with any overseas-based companies
- whether it will be fulfilling orders for goods which are pre-sold
- details of Warehouse Management System to check it can gather the information needed
- an estimate of the volume/value of goods expected to handle

Q36 - Do you envisage any difficulties in supplying information of this nature at the registration stage?

More than three quarters of respondents advised that they would not envisage any difficulties supplying this information at the registration stage.

Q37 - Do you have any comments about online systems applications that you would like HMRC to take account of when it is developing this solution?

Four respondents offered the following comments:

- the proposed 12 month verification period for HMRC seemed excessive
- needs to be user friendly
- need to learn lessons from previous online registration systems
- should have trade input

Registration verification

HMRC will undertake checks to ensure that the fulfilment house can comply with the requirements of the scheme.

The types of checks HMRC might undertake were set out in the consultation document and included a detailed verification of the information on the application, checks against other systems and registers (including criminal records, credit reference agencies, other government departments and agencies) and visits to premises.

Suggested 'fit and proper' checks laid out in the consultation listed a number of standards against which applicants might be assessed. These were subject to change but included:

- there is no history or evidence of illicit trading, fraud or significant non-compliance with revenue matters, or connection to other known non-compliant or fraudulent businesses
- there is no history of poor record-keeping or outstanding/unmanaged HMRC debts or a history of poor payment
- there has been no attempt to deceive or to trade (or attempt to trade) unapproved
- the business has provided sufficient evidence of its commercial viability/credibility

Fulfilment houses accepted onto the register would be required to:

- comply with the due diligence conditions
- comply with the record-keeping conditions
- in certain cases, comply with additional specific conditions or restrictions, where HMRC considers that a fulfilment house is 'fit and proper' to be approved but some additional controls are still needed

Q38 - Are there other requirements that you think should be included as part of a 'fit and proper' standard?

Four respondents offered the following comments:

- that Directors should also be 'fit and proper'
- AEO standards should be the norm
- there is a 'reasonableness' test

- there should be concrete examples of tests that meet the fit and proper standard

Q39 - Do you envisage any difficulties for compliant fulfilment houses upon registration?

Just over half of the 11 responses offered comments including:

- any verification procedure must be communicated effectively and resourced properly if it is to avoid adversely impacting on trade
- unclear whether HMRC anticipates verifying all existing fulfilment houses' customers before application to join the scheme would be accepted.

Q40 - Do you envisage any benefits for fulfilment houses that are on the register?

Just over half of the respondents could see a benefit to being on the register, citing reasons such as enhanced status as an approved fulfilment centre and as a potential selling tool, proving that the operation is legitimate.

Refusal to register or removal/withdrawal from register

The consultation set out that HMRC will look to refuse an application to register if it has reasonable cause and there is a potential threat to the tax revenue. Refusal of a Fulfilment House Due Diligence Scheme approval might also lead HMRC to review whether the business is fit and proper in relation to any other approvals it holds.

Once registered, HMRC might remove a fulfilment house if it has reasonable cause. Businesses may withdraw from the scheme if they intend to cease handling goods on behalf of overseas suppliers.

Businesses not on the register, whether because of refusal, removal or withdrawal, will not be permitted to handle goods (e.g. accepting delivery, storage etc of imported goods) on behalf of an overseas supplier. A decision to refuse an application or remove a fulfilment house from the register will be subject to a review and appeals process.

Q41 - Are the proposals - in respect of rejection, removal and withdrawal - proportionate?

Three quarters of respondents to this question felt the proposals were proportionate and backed this up with comments such as:

- providing the terms are reasonable, no issue with refusing or withdrawing registration for non-compliance
- provided there is a fair warning policy
- if limited to the Fulfilment House Due Diligence Scheme

A quarter disagreed, citing:

- unreasonable to give HMRC the power to put companies out of business
- refusal leading to HMRC to review any other approvals it holds is disproportionately heavy-handed when it is the overseas seller who is non-compliant

Q42 - Do you foresee any difficulties for a legitimate fulfilment house with the proposals to reject, remove or withdraw?

Respondents to this question answered unanimously that they saw no difficulties for legitimate fulfilment houses with the proposals to reject, remove or withdraw.

Q43 - Should HMRC consider other sanctions?

Respondents were evenly split between either:

- no other sanctions; or
- sanctions such as CEMA penalties, a public register or a probation period where HMRC checks transactions to ensure compliance

Q44 - Are there any other issues HMRC needs to consider around the rejection, removal and withdrawal from the register?

Two respondents suggested:

- HMRC should provide channels for conversations about compliance with the scheme and the necessary checks
- there should be a notice period preceded by pre-notification as an opportunity to correct the 'failure' and achieve 'approval'
- any non-approval should not affect non-fulfilment aspects of the business

Penalties

There will be penalties and sanctions for failure to comply with the scheme, including a specific new offence for fulfilment houses (that are required to be registered) that trade when not on the register. Other breaches of the conditions of the scheme, for example, failure to keep proper records, failure to undertake due diligence checks, or failure to register at the correct time, may also incur a penalty, examples of which were consulted upon:

- criminal prosecution
- civil penalties - HMRC is considering a financial penalty for each breach of the regulations or conditions of approval
- detention/seizure of goods
- restriction of approval on the register
- naming and shaming
- removal from the register

Q45 - Should HMRC consider any other offences not outlined here?

With the exception of suggesting CEMA offences, most respondents said no to this question.

Q46 - Should HMRC consider any other penalties not outlined here? e.g. suspension of registration

Most respondents felt that the list was comprehensive. Very few suggested that HMRC use CEMA penalties and that non-compliant overseas sellers should be subject to seizure of goods rather than fulfilment houses.

Q47 - Do you think the penalties above are appropriate and proportionate?

Three quarters of respondents felt that the penalties set out were appropriate and proportionate.

The remaining respondents disagreed and suggested that:

- criminal prosecution felt too severe and that naming is not appropriate
- it is wrong to make compliant traders outside of the intended aim of the scheme be subject to it
- should not be a civil matter but a criminal one if companies are found to be guilty of acting in a fraudulent manner
- does not consider scale of operations

Q48 - At what value should the civil penalty outlined above be set?

Responses suggested that the civil penalty could be:

- proportionate to the offence
- based on a percentage of the value of the goods seized
- equivalent to the charges made for providing the fulfilment service
- £50 per day rising to £1000
- similar to existing HMRC penalties.

Appeals and review

The consultation set out that certain aspects of the scheme will be subject to a review and appeals process.

Q49 - Do you have any comments in respect of an appeals and review process for this scheme?

Most respondents advised that they had no further comment to make. The remaining responses suggested the following:

- Will businesses be able to trade throughout the review period

- Channels for conversations should exist to reduce the number of appeals and reviews
- There will need to be a proper and effective internal review process which should be objective and reasonable

6. Handling goods: deliveries to and from fulfilment houses

Responses to Questions 50 - 58

As part of the consultation, HMRC considered ways in which it might deter or prevent deliveries of goods imported from outside the EU to and from non-registered fulfilment houses.

Checking the online register

It was suggested that businesses in the supply chain such as the Express Industry and/or customs agents might check an online register before allowing delivery of goods to fulfilment houses. If the fulfilment house is registered then the goods could be delivered there. If not then HMRC would not want the delivery to take place.

Who would check the online register?

The responsibility for checking the online register could rest with one or both of the importer (or their representative) and the transport and logistics operator.

Q50 - Will these businesses be able to determine whether a consignment is destined for a fulfilment house?

There were 18 responses to this question and the majority of the answers suggested that it would not be possible to determine whether a consignment was destined for a fulfilment house.

Some commented that they only have a name and address and this would not tell them whether the delivery was for a fulfilment house and therefore whether they should check the register. Others suggested that they have no idea what business is conducted at premises that they deliver to.

Several respondents commented that it should be HMRC's responsibility to determine whether carriers could allow the delivery to take place.

Q51 - How will the transport and logistics operator (e.g. FPO) know whether a consignment is being collected from a fulfilment house?

Most of the respondents replied that they would not know or would only know by checking HMRC's online register for every transaction.

Q52 - Are there any practical difficulties for businesses in checking an online register?

The main recurring theme was that some businesses that process a very large amount of consignments every day would find this very onerous, have implications for the contract to deliver and would considerably slow up the delivery process.

The point was also made that if an address was not on the register, it would be impossible to know whether that is because it is an unregistered fulfilment house that should be registered, or is not required to be registered (as it is not a fulfilment house). The transport or logistics operator would have no way of knowing.

Q53 - What risks do you see to this aspect of the proposal?

There was a variety of possible risks raised. The main comments centred around:

- no practical way to determine if a delivery address not on the register is a fulfilment house or not, unless they have the term 'fulfilment house' in the name
- owners of goods that have been released to free circulation cannot lawfully be prevented from taking possession of them
- any attempt to prevent the lawful owners of goods from taking possession of them may give rise to a legal challenge

Q54 - Do you have an alternative suggestion as to how to prevent delivery to or from an unregistered fulfilment house? Please provide details.

Half the respondents to this question suggested that the responsibility should lie with HMRC to make the check at the point of import and then advise the carrier not to deliver if the fulfilment house was not on the register. There were no viable alternative suggestions.

Q55 - What should happen to the goods if a business refuses to handle/deliver them?

A variety of comments were offered including return to sender, seizure, and arrange for HMRC to remove them.

The most compelling argument was that once goods have been released to free circulation, a carrier does not have any right to detain them or withhold them from their owner, provided that all charges under the contract of carriage have been paid.

Q56 - Should other businesses be required to undertake these checks?

Just under half of respondents to this question stated that HMRC or Border Force should undertake the checks. Only a few suggested that the importer should be required to undertake checks before it gets to the carrier.

Penalties

HMRC explored whether to introduce sanctions and/or penalties for failure to undertake the necessary online checks or for delivering to an unregistered business.

Q57 - Do you have any views on the proposal to introduce possible penalties/sanctions for the businesses outlined above? If so, please provide.

Comments suggested that it would be unjust to penalise a carrier for delivering goods to a particular address on the grounds that it is an unregistered fulfilment house when he has no way of knowing whether or not it is a fulfilment house at all. Penalties and sanctions should be addressed to those breaking the law not legitimate business in the supply chain.

Q58 - What penalties/sanctions do you think are appropriate for non-compliance?

Those who offered a response suggested a warning system and probation period to enable compliance, a percentage of the value of seized goods, a modest fine and use existing tax/customs penalties.

7. Impact on business

Responses to Questions 59 - 66

HMRC has acknowledged that requiring businesses to register and comply with new rules will have an impact on businesses, in terms of their administrative burdens. HMRC sought to understand the impact and mitigate as far as possible any adverse costs and impacts.

Impacts of the scheme on fulfilment houses

HMRC explored the impact on business based on the working definition of a fulfilment house and a wider definition outlined at paragraphs 3.8 and 3.13 of the consultation document.

Q59 - If your business falls within this definition, what impact is the proposed scheme likely to have on your business? Please provide details of both the anticipated one-off and the ongoing costs and burdens for:

a) Familiarisation with the new scheme and registering for the scheme

Responses highlighted costs for training and awareness, additional IT costs and the cost of new software and additional staff. One respondent did not feel additional costs would be significant but this was not the case with the other respondents.

b) Maintaining accurate records

Most respondents said that the record-keeping requirements would entail an increase in administrative burden and IT training costs. However, two suggested they already held similar records so did not see this as an issue.

c) Providing evidence to HMRC of due diligence undertaken to ensure goods are handled only for *bona fide* suppliers

Marginally more than half the respondents advised that requirements would not be easy to comply with and that further expense in terms of IT/Staff and training would be required. The remainder suggested that they either already keep this information or happy to work to clear guidelines.

d) Any other impacts related to the scheme not covered above.

There were only 7 responses to this question, with mostly similar points raised as for (a) - (c). A comment was made around costs for registering with HMRC and any ongoing costs i.e. annual renewal, auditing costs.

Q60 - If your business falls within this WIDER definition, what impact is the proposed scheme likely to have on your business?

There were only two responses. One of these suggested that if they fell into the wider definition they might look to stop this aspect of their business. The other response outlined similar points to Q59 and highlighted additional IT, staff and training costs.

Impact of proposals on importers or their representative and/or transport logistics operators

Q61 - What administrative burdens and costs do you envisage in having to check an online register for the fulfilment houses you deliver goods to or for?

The main burdens that respondents envisaged included new IT development (including software purchase), additional staff, additional audits and additional storage of goods.

Impacts on small and micro businesses

Q62 - Are there any specific impacts on small and micro businesses that are not covered above? If so, please provide details of the anticipated one-off and on-going costs and burdens.

Although no small or micro businesses responded, comments suggested that there may be increased IT, document management and compliance costs.

Q63 - Do you think that small and micro businesses should be excluded from registration?

All respondents suggested that an exclusion from the requirement to register might lead to deliberate disaggregation of fulfilment businesses to operate under the threshold and avoid registration.

Business benefits

Q64 - Please tell us what benefits you see for your business in the FHDDS generally or on any specific feature of it.

There were 10 responses to this question with half of the respondents saying that they could not identify any benefit from the Fulfilment House Due Diligence Scheme. The remainder suggested that there could be enhanced status and more legitimacy from being registered and would help them ensure their business does not inadvertently facilitate fraudulent activity.

Q65 - Please tell us if you think there are any other impacts not covered above.

Another impact, in addition to those already mentioned, suggested the scheme had the potential to drive business away from the UK to be fulfilled in other EU Member States.

Q66 - Do you have any information that could inform the Impact Assessment?

It was suggested that any increase in fulfilment costs would ultimately lead to increased costs for consumers.

Annex A: List of stakeholders consulted

Air & Cargo Services Ltd
Airline Operators Committee Cargo (AOCC)
Amazon
Association of Accounting Technicians (AAT)
Association of International Courier & Express Services (AICES)
British International Freight Association (BIFA)
Chartered Institute of Taxation (CIOT)
CML Ltd
Customs & International Trade Compliance Forum (CILT)
Davies Turner & Co Ltd
Davies Turner Air Cargo Ltd
DHL International (UK) Ltd
Direct Wines Ltd
Fedex
Grosvenor International Systems
Hellman Worldwide Logistics
International Logistics Group Ltd
Landmark Trade Services (UK) Ltd
Mail Competition Forum (MCF)
Panalpina World Transport Ltd
Port of Tyne
Road Haulage Association Ltd
Royal Mail Group
The Storage Place Limited
TNT
UK Chamber of Shipping Ltd
UK Warehouse Association
UPS
Westex Ltd
Woodland Group
Yodel