

Response to public consultation on proposals to allow Ministers to relax the EU cabotage rules for car transporters during the peak registration periods

February 2013

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website in accordance with the W3C's Web Content Accessibility Guidelines. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.dft.gov.uk

General email enquiries FAX9643@dft.gsi.gov.uk

© Crown copyright 2013

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

1. Introduction

1.1 EU Regulation 1072/2009 included new rules in relation to road haulage 'cabotage' - a domestic road haulage operation undertaken by non-resident hauliers on a temporary basis. Translated into domestic law, this results in goods vehicles from other EU Member States being limited to carrying out no more than 3 loaded operations within a 7 day period of arrival in GB. (After 3 loaded domestic journeys or 7 days the vehicle must leave and re-enter GB with a new international load to be able to undertake another 3 domestic journeys).

1.2 The new rules were adopted in GB through an amendment to the Goods Vehicles (Licensing of Operators) Regulations 1995 made by regulation 2(4) of the Goods Vehicle (Licensing of Operators) (Amendment) Regulations 2010 which came into force on 14 May 2010.

1.3 The change of rules in 2010 has constrained the ability of UK car transporter companies to move new cars during peaks in demand i.e. in the new car registration peaks in March and September. Traditionally, UK manufacturers and retailers have used non-GB specialist vehicles to supplement the GB fleet at these peak periods.

1.4 Industry, through the Society of Motor Manufacturers and Traders (SMMT), the Road Haulage Association (RHA), ECM (a car transporting company based in Carlisle), the European Association of Vehicle logistics (ECG) and others, have lobbied for change, highlighting the potential damaging impacts of the restrictions the revised cabotage rules have had on motor manufacturers and dealers.

1.5 The Department carried out a 4-week consultation exercise between 9 May and 5 June 2012 to seek views on the possible proposals to deal with the issue.

1.6 The Department received 13 responses to the consultation. This document summarises the responses received on each question asked in the consultation, provides the Department's response to each and outlines the next steps.

2. Detailed summary of responses to consultation questions

Organisations responding to the consultation and abbreviations used.

Volkswagen Group UK Ltd (VWG)

Honda Motor Company Limited (Honda)

Hyundai Motor UK Limited (HM)

Hyundai Dealers (HD)

ECM (Vehicle Delivery Service) Ltd (ECM)

The Society of Motor Manufacturers and Traders (SMMT)

The Association of European Vehicle Logistics (ECG)

Jaguar Land Rover (JLR)

Road Haulage Association (RHA)

Autologic Holdings plc (AH)

Ford Motor Company Ltd (FMC)

Freight Transport Association (FTA)

Traffic Commissioners (TCs)

Q1. Do you believe that there is a problem concerning the transportation of cars at the peak registration periods in March and September?

Analysis of responses

Eleven of the twelve respondents said there wasn't sufficient capacity within the UK car transporter fleet to cope with demand during the peak car registration periods in March and September. Volkswagen Group Ltd (VWG) said the new Cabotage rules forced foreign subcontractors to operate in a grossly inefficient manner which subsequently increased costs, reduced productivity and meant there was insufficient vehicle capacity to meet demand during the two registration peaks. Honda Motor Company Limited (**Honda**) said the situation had worsened under the current economic conditions as the number of UK transportation companies had reduced. Hyundai Motor UK Ltd (**HM**) and Hyundai Dealers (**HD**) said it wasn't financially viable for the UK car transporter companies to hold sufficient numbers of transporters all year round just to service the two peak periods. The Society of Motor Manufacturers and Traders (**SMMT**) and Jaguar Land Rover (**JLR**) said the shortage of transporter capacity could lead to contractual requirements not being met,

reduced customer satisfaction due to late deliveries, and cancelled orders. The Road Haulage Association (**RHA**) said their members had highlighted the capacity issues since the new EU cabotage rules were introduced.

One respondent, Autologic Holdings plc (**AH**) didn't believe there was a problem. They acknowledged that there were additional cars to be transported at the peak periods, but felt that with timely and accurate forecasting by the car manufacturers and importers, the car transporter companies could ensure that sufficient resources were available. AH said the number of UK manufactured vehicles manufactured and moved each month was consistent. AH said the number of imported vehicles increases in March and September but felt there was adequate storage in most Ports to handle the additional volume of vehicles. The Traffic Commissioners (**TCs**) said industry has clearly provided evidence that there are pinch points in March and September. The TCs were less clear that this is caused by the clearer definition of cabotage in EU Regulation 1072/2009. They said the Commission issued an interpretive document in 2005 that was adopted by GB, whereby regular, systematic and contracted operations such as those used for the transport of cars were not lawful under that interpretation. Thus this transportation arrangement was not lawful and represented a risk to operators and to Government and the enforcement agencies. However the TCs welcomed the fact that this issue was now recognised and discussed in an open manner.

Response of the Department for Transport (DfT)

The Department agreed with the majority of responses that there was a capacity problem during the peak registration periods which meant that car manufacturers and retailers were unable to reliably meet customer demand.

Q2. If the EU cabotage rules were relaxed during the peak registration periods would this have any detrimental effects on the UK car transportation/haulage sectors? Is so, please explain how?

Analysis of responses

Ten of the twelve respondents did not believe that a relaxation of the EU cabotage rules during the peak registration periods would have any detrimental effects on the UK car transportation/haulage sectors. Honda said the UK car transportation industry was at full capacity during the peak periods when the rules would be relaxed and deliveries could not be deferred. ECM (Vehicle Delivery Service) Ltd (ECM) said they only sourced vehicles from outside the UK fleet when resources within the UK had been exhausted - a point confirmed by the Association of European Vehicle Logistics (ECG).

ECM said the main reasons why UK car transporters would always be used in favour of non-UK ones were cost, productivity and language. They also stated that non-UK resources are more expensive due to the additional shipping costs to and from the UK at the start and end of a contract hire period. Non-UK transporters, due to lower bridge heights in Continental Europe and Ireland are designed to operate at a lower laden weight than UK equivalents. Consequently, their carrying capacity is less than UK transporters leading to reduced productivity and higher operating costs per vehicle delivered.

ECM explained that drivers of non-UK transporters, working as subcontractors during the peaks, generally spend every other weekend at home. Flights to and from their home country incurred additional cost as did the loss of productivity as a result of the Fridays and Mondays of the weeks each side of a driver's home visit being paid but being non-productive days. ECM said that many foreign car transporter drivers did not speak English and could not be used for dealer deliveries, only for point to point trunking operations.

JLR said a relaxation would not reduce the demand on UK hauliers, but just allow non-UK car transporters to pick up the excess business. The RHA said it did not believe that any relaxation would be detrimental to the UK industry - the sector itself had called for ways of increasing the capacity on a temporary basis.

Two of the twelve respondents did express some concerns about a potential relaxation of the EU cabotage rules. AH explained that their business model assumed that the periods when they have relatively low utilisation of their resources would be offset by busier periods. During periods of low utilisation AH said their fleet ran very inefficiently. Their ideal load would be ten cars going to the same dealer. When utilisation is low a single transporter may have to visit ten dealers to deliver its load. AH believe that the relaxation proposals would require them to reduce their fleet to ensure that it could run effectively and efficiently at the lower volumes that would become routine if for two months of the year non-UK transporters were able to work in the UK without restriction.

AH explained that their contracts with UK manufacturers are such that they undertake to deliver all of their cars and their contracts include a requirement to communicate with them electronically at the point of delivery to confirm arrival of the cars in a damage free condition. Few if any foreign operators would have such electronic systems in place. If AH's customers wanted to secure additional support from foreign transporters AH would be responsible for all damage to customers cars. AH suggested that foreign transporters were more likely to cause damage to their loads as they would not be familiar with UK roads and the potential for damage, eg. low trees. These costs would have to borne by AH under their contract with the manufacturers.

The TCs said there was a significant risk to roadworthiness compliance levels and road safety and fair competition as a result of any potential relaxation. They referred to random fleet compliance surveys conducted by the Vehicle and Operator Services Agency (VOSA)¹ which showed that domestic hauliers attracted a prohibition rate for mechanical defects of 10.4%. The average for all foreign hauliers was more than double at 21.8%. The TCs said that the consultation stated that the relaxation would only be applied "when the appropriate UK operator source is fully engaged" - but was not clear how this would be established.

The TCs suggested that the proposed relaxation would lead to foreign hauliers competing head to head with the established domestic operators in that period, and with lower cost-base due to the lower compliance levels. Unfair competition with non GB operators was a major complaint articulated by the industry within GB. The risk is that this relaxation would encourage lobbying for further relaxations given fluctuations in business activities. There is a high risk that it will be used self

¹ See tables A1.16 and A1.17 on VOSA Effectiveness Report 2010/11, available through the VOSA website

servingly to claim exemptions for other markets which hitherto would not have been attempted.

Response of the DfT

The Department agreed with the majority of respondents that a relaxation of the EU cabotage rules during the peak registration periods would not have a detrimental effect on the car transportation/haulage sector. Car transporters are specialist vehicles and they could not be used for general haulage operations so a tightly defined relaxation should have no impact on typical haulage operators. As the non-UK transporters were more expensive to hire they would only be used by the sector when the domestic supply was exhausted.

The Department recognised the point made by the TCs that roadworthiness prohibition levels of foreign hauliers were higher than domestic hauliers. Nevertheless, the Department is not convinced that this is likely to be a significant issue. Car transporters are highly specialised and costly pieces of equipment and we believe they are less likely to be non-compliant with routine roadworthiness requirements than the average HGV. We have also been influenced by new information exchange systems being introduced EU wide in early 2013 that will improve enforcement for vehicles visiting from other EU states.

Q3. Do you believe that maintaining the status quo (do nothing) is viable in the long term?

Analysis of responses

There was a general consensus amongst respondents that while the peak periods exist, provoked by the new registration periods in March and September, there was a need for change. ECM said that whilst domestic sales of new cars in the UK remain static at around 2m units, exports have increased dramatically in the past two years and are set to increase further this year and beyond. ECM was also concerned about car transporter capacity when growth returns to the UK economy and domestic sales revert back to their pre-recession figures as this will add another 0.5m domestic units per annum.

ECM said that during the March 2012 peak UK car manufacturers and importers suffered major problems in transporting products to dealers and ports of exit due to a grave shortage of capacity. ECG were also concerned about how the industry would be able to cope when domestic sales start to recover, suggesting that the lack of capacity would result in shipments being delivered late, impacting on customers and adding significant additional costs to the supply chain.

The RHA and JLR were also concerned about the late delivery of shipments to customers. The SMMT also pointed to the UK car industries export success and said the relaxation proposals were important for industry, consumers and the wider UK economy.

AH believed that it was entirely viable to do nothing. They did not believe that there was a problem and to the extent that there was an issue that needed addressing it was best overcome with proper planning of resource levels and the management of driver availability.

Response of the DfT

The Department agreed with the majority of respondents that there was a need for change. It was not economically viable for domestic car transportation companies to maintain the number of car transporting vehicles required for the peak periods all year round. There would always be a need to sub-contract non-UK car transporters and the new EU cabotage rules have had a detrimental impact on the supply and cost of these vehicles.

The Department was particularly concerned about the impact on UK exports as manufacturers were experiencing delays in moving their new cars abroad at the peak periods.

Q4. Are there any alternative options we should consider pursuing to deal with the issue of car distribution other than to introduce new secondary legislation?

Analysis of responses

Ten respondents felt there was no alternative other than to introduce new secondary legislation.

The Freight Transport Association (FTA) suggested that, instead of relaxing the rules on operating in the UK without requiring establishment, the Department could consider encouraging those in the sector to become established in the UK, albeit for temporary or time-defined periods. They felt this could be achieved through consideration of the existing operator licensing, vehicle registration and taxation systems and would reassure UK operators that visiting operators were meeting the same high safety standards and equally contributing to the use of UK infrastructure.

The FTA referred to the consultation which stated that the Senior Traffic Commissioner (STC) had indicated that the ability to specify foreign car transporters on GB operator licences was not possible under existing legislation. Rather than introduce new secondary legislation which would allow a relaxation of the cabotage rules, the FTA said a more straightforward solution would be to amend the legislation which the STC has indicated is causing a hindrance.

The TCs said that the proposed solution seems narrowly drawn, focusing on legalising established illegal operations rather than tackling the root cause or looking at other options such as modal shift.

Response of the DfT

The Department agreed with the majority of respondents who felt there was no alternative other than to introduce new secondary legislation.

The Department welcomed the suggestions for alternatives. However the FTA suggestion that foreign hauliers could be allowed to become established in the UK on a temporary basis would have far reaching consequences beyond the narrow issue of peak transportation of cars and would require major legislative change. In response to the point raised by TCs that the issue should be considered more

widely, it was, but no viable alternative options to tackle the capacity problem were identified.

Q5. Do you agree that the new secondary legislation should be restricted to car transporters only, but drafted in a way that would make it possible to capture further categories of vehicle at a later date by future secondary legislation?

Analysis of responses

Six respondents agreed that the new secondary legislation should be restricted to car transporters only, but drafted in a way that would make it possible to capture further categories of vehicle at a later date by future secondary legislation.

The RHA believed that the relaxation should apply only to the particular sector of car transportation where other solutions did not seem available. The FTA said notwithstanding their response to question 4, new legislation should not allow for further relaxations of the conditions of cabotage for other categories of vehicles.

Response of the DfT

The Department is clear that the current relaxation proposal will be restricted to car transporters only. However, it would seem sensible to structure the provisions so that it would be simple for future legislation to be made which could allow a further relaxation. Any future proposals would be subject to the usual legislative procedures including a further public consultation.

Q6. Do you believe that this targeted consultation will reach the most affected sectors/organisations on this issue?

Analysis of responses

Eleven of the twelve respondents agreed that this targeted consultation would reach the most affected sectors/organisations.

The TCs were concerned that the shortened period of consultation would mean the most affected sectors/organisations would not be reached.

Response of the DfT

The Department agreed with the majority of respondents who said that the consultation would have reached the most affected sectors/organisations.

Q7. Will a relaxation help your business and if so, how?

Analysis of responses

Ten respondents said a relaxation would help their businesses. There was a general consensus that a relaxation would allow the car manufacturers and retailers to deliver the additional peak period volumes of vehicles to dealers, and subsequently to their end customers, on time, and aligned to customer expectations. Honda said

that if the extra car transport capacity was not available this would result in reduced exports, storage capacity concerns and most importantly dissatisfied customers. HM and HD said that a relaxation would also help to control costs by ensuring adequate competition for the supply of car transport services. ECM said that a relaxation would allow their company to utilize the essential services of non-UK car transporters and their drivers without the additional operational restrictions, added cost and inefficiencies that the EU cabotage rules currently impose. ECM also said that a relaxation would allow the productivity levels of non-UK subcontractors to return to those that existed before the cabotage rules were introduced in May 2010, thereby ensuring that their company has sufficient capacity to meet the demands of industry.

AH said that a relaxation would not help their business. The TCs said that there was insufficient detail available to allow for an assessment of the impact of this move on the operator licensing system.

Response of the DfT

The Department agrees with the majority of respondents that a selective relaxation will help their businesses and the wider UK economy.

Q8. Will a relaxation hurt your business, and if so how?

Analysis of responses

Ten of the twelve respondents did not believe that a relaxation would hurt their business.

AH said a relaxation would reduce their revenues, increase costs and ultimately would reduce the size of their operational transporter fleet and reduce their driver workforce. The TCs said there was insufficient detail available to allow for an assessment of the impact of this move on the operator licensing system.

Response of the DfT

The Department agrees with the majority of respondents that a selective relaxation would not hurt most businesses in the sector.

Q9. Is there anything we need to know?

Analysis of responses

ECM said that the responsibility for ensuring supply of transportation services to the manufacturers, during the challenging sales peaks of March and September, rests mainly with the holders of high volume manufacturer contracts i.e. the major UK carriers. ECM also said that whilst they were respectful of the valuable contribution to the sector by minor carriers, they did not share that same responsibility and would not have the same appreciation or first-hand experience of managing that responsibility. ECM therefore suggested that consideration of responses to this consultation should take into account the possibility of extraneous agendas and be viewed in the context of the respondent's position within the market whether

subcontractor, minor carrier, or volume carrier and their respective responsibilities and obligation to the supply of services to the manufacturers during the peaks.

AH said that the cabotage regulations were introduced in an attempt to achieve certain objectives:

1. To prevent the UK road haulage industry from being undermined by mainland European transporter operators operating under different legislative regimes, with different cost structures including fuel duty rates.
2. To prevent vehicles that do not necessarily meet UK requirements being freely useable for extended periods in the UK.
3. To enable the UK transport sector to 'right size' their operations for the longer term without having to consider the effects of mainland European transport operators entering the UK market on an ad hoc basis from time to time.

AH believed that the above are valid objectives and that the cabotage regulations should remain. AH also stated that the 'peak' months were not always March and September. When customer demand is strong the customers require their new vehicles to be available on the first day of March or September as the case may be. In such circumstances transport volumes grow from early-mid February and August with another peak later in March and September.

The TCs said they were very mindful of the repeated refrain of GB operators to have a level playing field i.e. fair competition. Domestic operators carry what is seen as a level of burden through the licensing system that was seen as proportionate to maintaining a safe and fair industry. The TCs suggested that the relaxation proposal had the potential to generate a perception that one sector of the industry was being allowed an unfair advantage.

Response of the DfT

The Department was not convinced that a selective relaxation will lead to foreign car transporters having an unfair advantage over domestic operators. The foreign transporters and drivers would still be subject to the same roadworthiness and driver checks as domestic operators and drivers. The additional transport costs and reduced capacity of foreign transporters would ensure that they were only required when the domestic supply had been exhausted.

Q10. Do you agree that the impact assessment is accurate - in particular the analysis of costs and benefits?

Analysis of responses

Seven respondents agreed that the impact assessment was accurate.

HM and HD said that the impact assessment considered direct costs of transporter movements only; it did not consider the much larger costs to the UK economy of reduced car sales due to restriction of natural market demand if the cabotage rules were not relaxed. The RHA said that a minor concern would be that the figure of 8.5 mpg has been attributed to the car transporter sector. The RHA costing details for 2012 gave the average as 8 mpg. However car transporters are not as aerodynamic as other trailer types might be and have a certain amount of idling time where the

engines are used as a pump to operate the car decks. For these reasons the RHA suggested 7 mpg would be a better assessment. The TCs said that the Impact Assessment does not reflect likely increased collision rates through using foreign rather than domestic hauliers.

Response of the DfT

The Department was content that the Impact Assessment provided an accurate assessment of the capacity problem. However, the Department has noted the concern raised by the RHA about the 8.5 mpg figure for car transporters and has used the 7 mpg figure in a revised Impact Assessment.

With regard to the TCs' point about increased collision rates, the Department was not convinced that this was likely to be an issue. As mentioned previously, if a selective relaxation was allowed this would reduce the amount of international journeys required to be taken by foreign car transporters (out and in journeys to comply with the current rules), thereby reducing the number of miles travelled on UK roads.

Q.11. Do you have any data that might be useful for the impact assessment?

Analysis of responses

No additional data was supplied by respondents but the SMMT was happy to provide more data if needed.

Response of the DfT

As mentioned above, the Department has updated the Impact Assessment to take into account the 7 mpg figure suggested by the RHA.

Q.12. Other comments or concerns - please advise?

Analysis of responses

ECM stated that prior to the introduction of the new cabotage rules in May 2010, even with the less restricted use of non-UK subcontract transporters, ECM, like many carriers, frequently struggled to meet the automotive industry's needs during the March and September sales peaks. The operational inefficiencies resulting from the introduction of the current rules in May 2010 meant that ECM were unable to cope with their customers' requirements and the UK system for the transportation of motor vehicles was no longer fit for purpose. ECM said that the UK's car transport capability could not support the manufacturer's needs now, so it would have no hope of meeting their requirements when growth returns to the UK economy.

ECG said that the actual dates of any relaxation to be considered were critical - the consultation just refers to 'March' and 'September'. However, peak deliveries for each of these months start around 1-2 weeks earlier and only finish around 1 week afterwards. The critical periods were therefore each about 7 weeks in duration.

RHA said that it had campaigned over the years to help the UK haulage industry have a level playing field with foreign operators. Therefore it was only because there appeared to be no other reasonable solution to this sector that they approved of the proposed cabotage relaxation.

The RHA was clear that they were only in favour of relaxations during the peak periods and only for this sector due to the nature of the load and thus the equipment and driver training required. The RHA stressed that cabotage relaxations should only apply after full utilisation of the 'UK fleet' had occurred and that attempts to by-pass UK operators first would not be supported.

AH made the point that car transporters cost between £160k and £200k depending upon specification. They could be used for one purpose only, the transportation of cars. AH stated that total annual UK volumes had reduced by approximately 25% over the last decade and during the same period fuel costs had increased by circa 60%, but the transport rates paid by the manufacturers had in many cases reduced by up to 40% over the same period. AH said that the consultation raised concerns of industry stakeholders that, for a relatively short period of time each year, they might experience some delays. The AH would like to express a broader concern as to how sustainable the current business model was for anyone but the largest operators. AH stated that relaxing the cabotage regulations would put greater pressure on the smaller operators which would force them to exit the business or at best reduce their exposure. This would of itself be anti-competitive.

The Ford Motor Company Ltd (**FMC**) suggested that any relaxation period should start two weeks before the peak months i.e. the last two weeks in February and last two weeks in August. This would allow more vehicles to get delivered for the start of the peak selling period.

The TCs said the consultation document set out what might be seen to be a simplistic approach to solving a supply problem. In their view, it fails fully to reflect the wider impact on road safety and fair competition. There is no mention of enforceability of the proposal and 'specialist car transporter' was not defined. There was little consideration of other options, such as GB hauliers hiring foreign car transporter trailers and operating them with GB tractor units under the proper control of operator licensing. Finally, the TCs said there was no consideration given of the potential for modal shift to rail particularly in relation to port operations.

Response of the DfT

The Department agrees with some of the respondents that a longer relaxation period would seem sensible, which will allow more vehicles to be delivered for the start of the peak selling periods. The Department therefore intends to proceed on the basis of the selective relaxation periods running from:

- 22nd February to 31st March, and;
- 25th August to 30th September, each year

With regard to the TCs' point about GB hauliers hiring foreign car transporter trailers, the Department understands that the vast majority of full scale car transporters, i.e. 9 car plus capacity, are road trains comprising the combination of a rigid lorry with a

fixed car transporter body, towing a drawbar trailer. The lorry and trailer function as one unit; they cannot operate independently and are not readily compatible or interchangeable between makes and models. For the above reasons, car transporter semi-trailers are a rarity both in the UK and abroad. This fact together with the knowledge that where they do exist, standard general haulage tractor units need to be adapted for car transporter operations, effectively rules out the concept of using standard GB registered tractor units to pull foreign car transporter semi-trailers.

3. Next steps

3.1 After considering the responses to the consultation, Ministers have decided to introduce new secondary legislation which will allow specialist vehicles from other EU Member States to carry out extended cabotage operations during the peak car registration periods. Ministers believe that the proposal will help the automotive industry to meet demand at the peak car registration periods and thereby boost the UK economy.

3.2 The secondary legislation will be drafted to allow vehicles from other EU Member States, carrying cars and vans only, to carry out cabotage operations without restrictions to the number of journeys between 22nd February to 31st March and 25th August to 30th September each year.

3.3 The operators of these vehicles will need to hold a Community licence and must comply with all other regulatory requirements, such as the drivers' hours and roadworthiness rules.

3.4 As no other industries have demonstrated a need, Ministers would like to make clear that there are no plans to allow a relaxation of cabotage restrictions for any other classes of vehicle.

3.5 The Department anticipates that the proposed legislation, if successfully introduced, will be implemented in time for the 25th August to 30th September 2013 peak period.