



Department
for Environment
Food & Rural Affairs

Government response to the consultation on amendments to the Heavy Commercial Vehicles in Kent (No.3) Order 2019 to protect UK food supply

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We are the Department for Environment, Food and Rural Affairs. We're responsible for improving and protecting the environment, growing the green economy and supporting our world-class food, farming and fishing industries.

We work closely with our 33 agencies and arm's length bodies on our ambition to make our air purer, our water cleaner, our land greener and our food more sustainable. Our mission is to restore and enhance the environment for the next generation, and to leave the environment in a better state than we found it.



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1. Overview

1.1 Introduction

This document provides a summary of responses to Defra's consultation exercise on the 'Expedited Return Scheme (ERS)' and the 'Prioritisation of Goods Scheme for Gibraltar-bound grocery vehicles', and the Government's Response. The consultation ran from 12 January 2021 until 14 January 2021. The aim of the document is to provide a summary of the responses received and of the changes made to the policy as a result.

1.2. Background

The UK food supply chain runs on a 'just in time' basis, which means it is inherently susceptible to delays. Such disruption was seen in the UK in December 2020 following the French Government's decision to close their border to UK traffic to prevent the spread of the new variant of COVID-19. It increased the average round-trip journey time for food hauliers from approximately 4 days to 8 days. Around 25% of supermarket deliveries were not completed for several days.

Whilst this disruption was largely resolved following agreement between the UK and French governments to allow accompanied freight services to resume, the potential for further disruption remains high. This is particularly likely during the first few months of 2021 as new post-EU transition period processes and procedures come into force and the continuing effects of COVID-19-related absences are felt.

The combination of these unprecedented factors is likely to contribute to delays at the UK/EU border which could, in turn, prevent the speedy return of empty goods vehicles to the EU where they can collect more food. Such delays would cause disruption to the food supply chain, given that a large proportion of food consumed in the UK travels across the Short Strait crossings from continental Europe.

Small but visible changes in the availability of food products in the UK can trigger disproportionate consumer behaviour, including panic buying. At the beginning of March 2020, there were no food supply issues in the UK, but consumer stockpiling and panic buying destocked supermarket shelves on a daily basis. It is highly likely such behaviour would reoccur if food supply was subject to disruption.

In addition, Gibraltar relies on the UK for approximately 50% of its food supply. Should food supply from the UK to Gibraltar be disrupted, local alternatives may not be able to scale up at the speed necessary to fully supply Gibraltar, potentially causing supply issues and associated negative consumer behaviour. The overriding objective of this policy is therefore to provide a means for food freight to flow through the Short Strait crossings in order to ensure ongoing food supply to the UK and Gibraltar.

The consultation document set out two proposals to mitigate the impact any future border delays might have upon the food supply chain. These were:

1. An Expedited Return Scheme (ERS), to ensure that empty food vehicles travelling from the UK to the EU are not delayed at UK ports, so that they can be refilled and return with food supplies. This amendment gives the Secretary of State the power to issue priority food supply permits to vehicles deemed critical to the maintenance of UK food supply.
2. That Gibraltar-bound groceries be added as a new category of priority good under the Government's pre-existing Prioritisation of Goods Scheme. This gives the Secretary of State the power to issue priority goods permits to vehicles carrying full grocery loads destined for Gibraltar.

These proposals are intended to ensure that, even in the event of border disruption, the UK and Gibraltar's food supply chains remain stable. However, these are emergency measures, only to be used in extremis and for the shortest time possible for as long as significant border delays exist and food supply flow is reduced.

1.3. Methodology

Defra contacted, via email, 69 parties considered by the department to have an interest in food supply, logistics, and/or traffic management in Kent, about the launch of the consultation. The consultation was also mentioned at all relevant stakeholder forums. The parties were asked to respond to 5 questions about the proposals, alongside providing some additional information about who they represent, such as size of organisation. In total, 25 responses were received.

All responses were considered. The following analysis reflects only the views of individuals or organisations that responded to the consultation. It includes a summary of the main comments made in response to each question. It is not intended to be an exhaustive record of all the points made and the absence of a particular issue does not indicate that it has not been taken into consideration or that it is of lesser importance.

2. Summary of responses

2.1. Responses to Question 1:

We asked stakeholders: 'Do you agree with the proposal to expedite empty food vehicles returning to the EU as part of the Expedited Return Scheme? If not, why not?'

Of the 21 stakeholders who responded to the question, 16 – or three quarters – answered yes, or yes in principle.

Response	No. of stakeholders
Yes	8
No	5
In principle yes, but with reservations	8
Didn't answer	4

Reservations raised:

For those respondents answering yes in principle, reservations included:

- Operational concerns including compliance and enforcement difficulties, high resource requirements and potential competition with other prioritised goods.
- The limited scope of the scheme offers unfair advantage to supermarkets. Does not include manufacturers and producers, take account of raw and critical ingredients, or account for the interdependencies and complexities of the UK food supply chain (i.e. delivery fleets servicing multiple retailers).
- The scheme does not allow for vehicles containing re-useable packaging or pallets, or cleaning materials to be included. Some respondents argued that restricting the scheme to empty vehicles will limit its benefit due to economic, environmental and traffic reasons.
- Consideration was requested for reimbursing other sectors in the UK economy whose delays would increase as a result of switching on and off the scheme.
- Fresh produce, ambient and chilled food goods, and other highly perishable agri-food products should also be included in the scope.
- One respondent requested that we ensure triggers are objectively defined and one respondent did not support the filling of the hard shoulder and deactivation of the green lane as an appropriate trigger.

2.2. Responses to Question 2:

We asked stakeholders: 'Do you agree with the proposal to introduce Gibraltar-bound groceries as a new category of priority good under the Prioritisation of Goods Scheme? If not, why not?'

Half of respondents answered yes, or yes in principle. 5 of the 25 respondents expressed no view on the matter given trade with Gibraltar extended beyond their remit, whilst a further 6 did not include a response.

Response	No of stakeholders
Yes	9
No	3
In principle yes, but with reservations	2
No view as don't export to Gibraltar	5
No response	6

Reservations raised:

- 2 respondents agreed to the proposal in principle but expressed reservations with compliance and the scheme's operational feasibility. These respondents raised concerns that the number of freight vehicles allowed to use the ERS will correspond directly with the challenges of compliance and enforcement, the level of non-compliance, and the risk of significant impacts on the Kent Traffic Management Plan.

2.3. Responses to Question 3:

We asked stakeholders: 'Is 7 days an adequate length of time to allow empty food vehicles to travel to the EU, reload with food, and re-enter the UK under the ERS?'

Of the 25 respondents, just under half agreed or agreed with reservations.

Response	No of stakeholders
Yes	8
No	6
In principle yes, but with reservations	3
No comment	8

Reservations raised:

- The proposed 7-day timelines are tight. This is due to: length of supply chains, requirement for rest breaks, potential border disruption and complications associated with COVID-19 testing requirements. Larger window would be desirable, 8-9 days suggested as a more comfortable window for drivers.
- Concerns about the enforceability of the 7-day window and the continuity of drivers/vehicles making the same outbound/inbound legs.

2.4. Responses to Question 4:

We asked stakeholders: 'Is it advisable for the ERS to operate at certain times of the day only?'

Of the 25 respondents, only 4 agreed that the scheme should operate only at certain times of the day, with over half of those who provided an answer expressing preference for a scheme operating 24/7.

Response	No of stakeholders
Yes	4
No, outright	3
No, 24/7 preferable	9
No comment	9

For those preferring the scheme to operate 24/7, reasons included:

- 24/7 is preferable to ensure smooth flow.
- The agri-food chain businesses targeted by the scheme would benefit from flexible delivery times to support their just-in-time logistics. Introducing specific timeslots would create further delays and disruption to routes.
- Further queues may form from those ERS-designated vehicles who have missed their timeslot and must wait for the window to reopen.
- Designated timeslots may clash with high volume tourist traffic periods.
- Friday and Saturday are especially busy for delivery vehicles, so must be factored in.

Of the 4 respondents agreeing with the proposed limited timeframe, explanations centred on limiting the scheme to overnight hours only to minimise the impact on local traffic, which predominantly uses Operation Brock contraflow during the day and early evening. Limiting to overnight hours would also minimise impacts on the overall Government Traffic Management Plan.

2.5. Responses to Question 5:

We asked stakeholders: 'Is it beneficial for users of the ERS to have DVSA Earned Recognition status?'

Of the 25 respondents, only 11 answered the question directly with 14 providing no comment. Of this 11, only 2 agreed that DVSA Earned Recognition status is a beneficial element to the scheme. No further justification was provided.

Responses	No of stakeholders
Yes	2
No	9
No comment	14

Reservations raised:

Of the 9 that disagreed, the reasons given were as follows:

- The primary cause for concern amongst the majority of respondents was that Earned Recognition status as a requirement for the scheme would only be applicable to UK hauliers and would limit the number of hauliers able to access the scheme.
- Respondents expressed a desire for EU hauliers coming into the UK to be included in the scheme, given the important role they play in the UK food supply chain.
- Respondents also raised concerns that prioritising UK hauliers over EU counterparts would facilitate an unfair competitive advantage.
- Green operators are choosing not to subscribe to Earned Recognition so would be excluded from the scheme.

3. The Government's response to the consultation

The 25 businesses which replied to Defra's consultation were largely supportive of the proposed measures.

In total, two-thirds of respondents agreed with the need for the Expedited Return Scheme. Half of these agreed in principle to the scheme but expressed various reservations.

Half of respondents agreed in principle with the need for the Prioritisation of Goods Scheme for Gibraltar-bound grocery vehicles, whilst others expressed no view on the matter, often because trade with Gibraltar extended beyond their remit.

Stakeholders expressed concerns about the ERS's operational feasibility and resourcing requirements, as well as the possible impacts of further bureaucracy on existing challenges at the border. These operational concerns, along with reservations about the consequences of the 8-hour delay trigger point, have been noted, and Defra is working closely with colleagues from the Kent Resilience Forum (KRF) to address them.

In line with stakeholder requests, we have amended the 7-day turnaround proposal (for return to the UK) to 10 days, which we consider to be a proportionate extension in order to facilitate expedited returns. We are also working with the KRF to understand the feasibility of operating the scheme 24/7.

Following widespread concern from respondents, and our wish to ensure the scheme is open to UK and EU hauliers, the requirement for DVSA Earned Recognition status to access the scheme has also been removed. However, there are benefits to operators to being in the Earned Recognition scheme and we will encourage participation.

We do not plan to amend the ERS to cover non-empty trucks or those carrying pallets, as doing so would undermine the scheme's intention of enabling the flow of vehicles by eliminating border checks for particular agri-food vehicles.

Stakeholders voiced concerns that the scheme's exclusivity to supermarkets overlooks other players in the supply chain such as manufacturers and producers, and renders it anti-competitive. Given that the scheme is an emergency measure with the overarching objective of maintaining consumer confidence in the UK's food supply, and is only intended to be used temporarily for the duration of periods of significant disruption, we believe there is a strong argument for its need despite these concerns. Furthermore, the scheme must be operationally feasible, by containing the number of vehicles given access. It must also remain simple to administer and enforce in order to remain effective. Offering access to a small group of food retailers who together represent around 95% of the UK food retail market will bolster consumer confidence while avoiding overwhelming the Kent Traffic Management System. Other Government contingency measures remain available to those across the agri-food chain in the event of border disruption. The use of Government Secured Freight Capacity, for example, is already in place to safeguard the flow of Category 1 goods (including critical food chain inputs) from 1 January 2021 onwards.

One stakeholder also expressed reservations about the use of supermarket data to escalate and de-escalate the scheme. Supermarket data remains the most direct source of information available on supply and demand, so we propose to continue to use it as the primary source for trigger points. This data is quality assured and cross-referenced with other available sources of contextual information, including intelligence from across the food supply chain, and any decision to activate or deactivate the scheme will involve Kent Command.