

Proposed Legislative Amendments to the Heavy Commercial Vehicles in Kent Order

(Expedited Return Scheme and the Prioritisation of Gibraltar-bound Grocery Supply Freight)

Context

1. 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. As a result of this action, the Christmas and New Year period saw significant disruption to both cross-Channel freight flows and roads in the vicinity of Channel ports. Operation Stack and Operation Brock were deployed to manage queues of Heavy Commercial Vehicles (HCVs).
2. Whilst this disruption was largely resolved following agreement between 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 months of 2021 as new post-transition period processes and procedures come into force and the continuing effects of COVID-19-related absences are felt (already as high as 15-20% in some areas of manufacturing and distribution). The combination of these unprecedented factors is likely to contribute to delays at the border which could, in turn, prevent the speedy return of empty goods vehicles to the EU where they can collect more food. Such delays are likely therefore to have a direct impact on the UK's food supply.
3. Small but visible changes in the availability of food products in the UK can trigger disproportionate consumer behaviour, namely panic buying. This can rapidly de-stock the food system and supplies of ambient goods, as we saw in March 2020. This occurred even without any disruption to food supply chains and in spite of a concerted comms campaign. Given the potential for border delays to impact supply chains over the next few weeks, we are proposing an emergency contingency measure – the Expedited Return Scheme – that may be used to expedite the return of empty food lorries from the UK to the EU where they can be restocked with supplies.
4. 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. We are therefore also proposing that Gibraltar-bound grocery supply freight be expedited under similar arrangements.

Policy Rationale

5. The food supply chain is one of the UK's critical infrastructure sectors and ensuring the smooth flow of goods across the UK's borders is a key Government objective. Approximately 10% of food consumed in the UK travels across the Short Strait crossings making them critical for UK food supply.
6. The UK food supply chain runs on a 'just in time basis' which is inherently susceptible to delays. In December 2020, the temporary closure of the French border to vehicles from the UK 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. The impacts to consumers were limited in this case, as supermarkets had over-stocked prior to the Christmas period.
7. Consumer behaviour is unpredictable. 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 be further exacerbated if food supply was subject to disruption.
8. The overriding objective of this policy is therefore to provide a means for food freight to flow through the Short Strait crossings and to provide assurance to the food supply chain that they would not be subject to significant delays.
9. The Heavy Commercial Vehicles in Kent Order (No.3) 2019 provides a suite of measures to mitigate the impact on the Kent road network resulting from disruption at ports. Under this order there is provision for HCVs carrying loads of fresh fish for human consumption, or day-old chicks to be prioritised through the traffic management system through use of a 'Prioritised Goods' permit.
10. The Government is proposing amendments to this order to secure the UK food supply and supply bound for Gibraltar by allowing for the prioritisation of outbound vehicles moving from the UK to the EU.
 - a. Firstly; we are proposing 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 will give the Secretary of State the power to issue Expedited Return Scheme permits to vehicles deemed critical to the maintenance of UK food supply.
 - b. Secondly; we are proposing that Gibraltar-bound groceries be added as a new category of priority goods under the Government's pre-existing **Prioritised Goods Scheme**. This will give the Secretary of State the

power to issue Prioritised Goods permits to vehicles carrying full grocery loads destined for Gibraltar.

11. All eligible vehicles under both schemes will be able to use the Operation Brock contraflow between Junctions 8 & 9 of the M20 in the event of disruption at the Port of Dover and the Eurotunnel subject to any instructions from Kent Police under the Kent Traffic Management Plan. **These are emergency measures, only to be used in extremis and for the shortest time possible so long as significant border delays exist and food supply flow is reduced. Even once the underpinning legislation is in place, the Secretary of State would only take these contingency measures when the relevant trigger points are reached. The measures would cease as soon as not required and will be suspended if it causes congestion in the contraflow or is otherwise deleterious to the Kent Traffic Management Plan.**

12. The Department for Transport is also proposing an additional amendment to the Heavy Commercial Vehicles in Kent Order (No.3) 2019 to make it a legal requirement for an HCV driver arriving in Kent via the M20 or M2 to be in possession of a negative COVID-19 test result. The intention behind this proposal is to provide an additional incentive to HCV drivers and their employers to ensure drivers arrive in Kent with a negative test, in order to maximise the flow of goods across the Short Straits and minimise any road disruption in Kent. This is subject to a separate consultation. Further information can be sought by emailing OperationBrockSIs@dft.gov.uk.

Operating the Scheme

13. The intention behind Defra's proposals is to minimise disruption to the UK and Gibraltar's food supply by prioritising the passage of relevant vehicles through the port of Dover or the Eurotunnel.

14. Defra has worked closely with the Border and Protocol Delivery Group (BPDG), the Department for Transport (DfT), the Driver and Vehicle Standards Agency (DVSA), Kent Resilience Forum (KRF) and Kent Police, to develop a robust set of arrangements for operating these contingencies. The measures are intended for short-term use in an emergency situation only. If triggered, they would allow for up to 300 HCVs per day, to be expedited via the Operation Brock contraflow (of which an estimated 10 per day are Gibraltar bound and will use the Prioritised Goods route).

Trigger Points

Trigger points for the ERS

15. The Secretary of State will only exercise the power to issue ERS permits if there is a serious risk of disruption to food supply in the UK. Any decision to implement the ERS will be based on the activation of two key trigger points and the existence of a range of wider contextual factors (listed below).
16. Key trigger points for implementation are:
- a. Congestion on the approach to Dover of 8 hours or more;
 - b. Actual loads delivered to UK supermarkets falling below 75% of planned expectations for 2 consecutive days.
17. Alongside these trigger points, other contextual indicators will be considered, including:
- a. Increased consumer demand, indicated by the introduction of item limits by retailers and/or any reported uplifts in sales of key items which could signify the onset of panic buying;
 - b. Increased retailer supply requirements, indicated by an uptick in delivery bookings made by retailers of more than 10% which provides a proxy measure for concern about a run on stocks.
18. Operation of the ERS will be continually monitored. The scheme will be stood down as traffic flow rates recover, delivery flow returns to near normal, and contextual indicators show that demand and supply issues are settling. The operation of ERS will also be suspended if it causes congestion in the contraflow or is otherwise deleterious to the Kent Traffic Management Plan.

Trigger points for Gibraltar

19. The Secretary of State will only exercise the power to issue priority goods permits to Gibraltar-bound grocery supply freight if there is a serious risk of disruption to food supply in Gibraltar.
20. Any decision to implement the scheme will be based on the same key trigger points as the ERS, outlined above. Similarly, the scheme will be stood down as traffic flow rates recover, delivery flow returns to near normal, and contextual indicators show that demand and supply issues are settling. The scheme will be suspended if it causes congestion in the contraflow or is otherwise deleterious to the Kent Traffic Management Plan

Eligibility Criteria

Eligibility Criteria for the ERS

21. Vehicles in scope of the ERS will be empty food lorries that are part of the logistics supply chain supplying food to supermarkets that have the largest market share, supplying around 95% of the UK market. This will cover supermarkets' own haulage operations as well as their sub-contracted hauliers which meet the eligibility criteria outlined below. We expect that such vehicles will include:
- a. Insulated vehicles for fresh produce
 - b. Refrigerated vehicles for fresh produce
 - c. Frozen vehicles for frozen goods
 - d. Tautliner vehicles for ambient goods
22. In order to be granted an ERS permit, each of the following requirements must be satisfied:
- a. Vehicles (as represented by single registration number) must be scheduled to return to the UK, with food supply, within a specified timeframe – likely 7 days – and without conducting any other assignments beforehand or en route;
 - b. Vehicles must be empty; meaning that they must not contain any goods or material that would be subject to border checks (e.g. wooden pallets or goods returning to the EU);
 - c. Drivers must possess a valid Kent Access Pass (KAP) and any necessary documentation to get through the border, including proof of a negative COVID-19 test result taken within the previous 72 hours;
 - d. Vehicle details (vehicle type/registration number) must have been submitted prior to departure;
 - e. The Government is also considering requiring scheme users to have DVSA Earned Recognition status. This will provide confidence that eligibility criteria have been met as operators in the Earned Recognition scheme have demonstrated a strong track record of compliance.
23. The ERS must balance security of food supply with the number of vehicles using the scheme per day. The scheme cannot accommodate all UK food supply vehicles as this would overwhelm the Kent Traffic Management System. The scheme must also be simple to administer and to enforce. The scheme will therefore be open to the major retailers that supply around 95% of the UK food market. These are Tesco, Sainsbury's, Asda, Morrisons, Aldi, Co-op, Lidl, Waitrose and M&S and their logistics partners. Permits will be allocated in proportion to the retailer's current market share of the UK food sector and will not exceed a total of 300 per day. This is to manage the number of vehicles using the scheme, safeguarding the Kent Traffic Management systems, whilst having the maximum benefit for food

supply. We believe that offering access to this scheme to around 95% of the food retail market (represented by the top nine retailers) will ensure UK food supply is maintained and minimise the potential for shortages that would provoke stockpiling and other negative consumer behaviour.

Eligibility Criteria for Gibraltar Prioritised Goods

24. Vehicles in scope of the Prioritised Goods Scheme for Gibraltar will be Gibraltar-bound grocery supply lorries carrying full loads. The scheme will be open to Gibraltar's largest supermarket, Morrisons, and its logistics partners.

Administration

Administration of the ERS

25. Under the ERS, in-scope retailers will need to verify to Defra that each individual HCV meets the eligibility criteria for the scheme and is border-ready. This would be expected to be completed electronically. Once this information is received and checked by Defra, the Secretary of State will issue a permit to the retailer or their logistics partner. The retailer will also provide a dated sticker at the depot where the lorry unloads. Permits will be valid for a period of 24 hours.

26. Use of the Operation Brock contraflow will only be granted if the permit is easily visible in normal daylight from a position in front of the vehicle, and if the reflective sticker is clearly affixed to the front and rear of the vehicle.

27. The Government is considering whether ERS-eligible vehicles should only be able to access the Operation Brock contraflow at certain times of the day to help with traffic flow management. Whilst it would be ideal for the ERS to be accessible at any time of day or night, allowing hauliers access to the contraflow during peak hours may place a significant and potentially unmanageable burden on Kent Police. If use of the contraflow is restricted to certain times of the day, this will be specified on the permit issued by the Secretary of State.

Administration of the Gibraltar Scheme

28. Under the Prioritised Goods Scheme for Gibraltar, in-scope vehicles will need to attend the Prioritisation Control Site at Ebbsfleet where they must verify that they hold a valid KAP. They will then undergo border readiness checks and, once approved, will be issued with a Priority Goods permit and Identifier. HCVs will be provided with a visible "priority sticker" which is linked to number plate VRN checks.

29. Eligible vehicles have been allocated a specific route to re-join the M20 at Junction 7 and will continue their journey to port using the contraflow between Junctions 8 & 9.

Enforcement

30. Given that the scheme is intended to operate in extremis only and for the shortest time possible, enforcement will be carried out according to the existing powers of Kent Police under the Kent Traffic Management Plan (Heavy Commercial Vehicles in Kent Order (No.3) 2019). Defra is continuing to work with stakeholders to confirm operable enforcement and traffic management solutions.

Data Gathering

31. All data collected as evidence of meeting the ERS eligibility criteria will be subject to a data protection impact assessment.

32. A Data Privacy Impact Assessment (DPIA) has already been conducted for the Prioritised Goods Scheme. No new or additional data protection issues have been identified over and above those for the existing ERS process. A DPIA will be completed if this is required or existing arrangement extended. A privacy notice will be created explaining how the data will be used.

33. A summary of responses will be published and Defra will follow the existing consultation principles issued by the Cabinet Office that address Freedom of Information/Environmental Regulation and Data Protection legislation requirements. Full details can be found on GOV.UK:
[https://www.gov.uk/government/publications/consultation-principles-guidance:](https://www.gov.uk/government/publications/consultation-principles-guidance)

Confidentiality

Please begin your responses to this consultation by answering the following question on confidentiality.

- **Would you like your responses to be kept confidential? Yes/No**
- **If you answered yes to this question, please give your reason.**

Consultation Questions

We wish to seek your views on the proposals outlined above, namely in response to the following questions:

- **QUESTION 1: 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?**
- **QUESTION 2: Do you agree with the proposal to introduce Gibraltar-bound groceries as a new category of priority good under the Prioritised Goods Scheme? If not, why not?**
- **QUESTION 3: 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?**
- **QUESTION 4: Is it advisable for the ERS to operate at certain times of the day only?**
- **QUESTION 5: Is it beneficial for users of the ERS to have DVSA Earned Recognition status?**

How to Respond

The consultation period began on 12 January 2021 and will run until 23.59 on 14 January 2021. Please ensure that your responses reach us before the closing date.

You may respond by emailing Defra_PoGTeam@defra.gov.uk.

When responding, please provide the following information:

- What is the name of your organisation?
- How large is your organisation? (1-250 people / more than 250 people)
- Where does your organisation primarily operate?
- What is the nature of your organisation? (ports and carriers, haulage sector, exporters and intermediaries, local authorities and other public-sector bodies, food industry, etc.)
- What goods do you import / export?