

## EXPLANATORY MEMORANDUM TO

### THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 3) (AMENDMENT) ORDER 2020

2020 No. 1146

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 This amending Order is part of a series of three instruments that amend the Heavy Commercial Vehicles in Kent (No.1) Order 2019, the Heavy Commercial Vehicles in Kent (No.2) Order 2019, and the Heavy Commercial Vehicles in Kent (No.3) Order 2019 (the ‘2019 Orders’). This Order extends the period for which Operation Brock, which is a traffic management system, will be deployed and defines the strategic roads for which cross-Channel Heavy Commercial Vehicles (“HCVs”) will need a Kent Access Permit (“KAP”) as issued by the ‘Check an HGV is Ready to Cross the Border service’ (the “Check an HGV service”). HCV drivers without a KAP on these roads will face a fine. This amending Order would also allow HCVs carrying only specific goods (fresh and live seafood products and day-old chicks (“DOCs”)) to obtain a Priority Goods Permit that allows HCVs to bypass the Operation Brock queues.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales and Scotland.  
4.2 The territorial application of this instrument is the same.

#### 5. Extent and Territorial Application

- 5.1 The territorial extent of this instrument is England and Wales and Scotland.  
5.2 The territorial application of this instrument is the same.

#### 6. European Convention on Human Rights

- 6.1 The Parliamentary Under Secretary of State, Rachel Maclean MP has made the following statement regarding Human Rights:

“In my view the provisions of the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020 are compatible with the Convention rights.”

## **7. Legislative Context**

- 7.1 Section 17 of the Road Traffic Regulation Act 1984 allows the Secretary of State to make regulations governing the use of special roads (primarily motorways). Article 2 of this Order further regulates traffic using the M20 and M2 Motorways in Kent during periods when cross-Channel travel disruption is likely or is occurring. Section 105 of the Deregulation Act 2015 enables these provisions, which rely on a power to make regulations, to be included in this Order.
- 7.2 Section 20 of the Road Traffic Offenders Act 1988 (“the 1988 Act”) provides an effective procedure for admitting evidence from prescribed devices (e.g. Automatic Number Plate Recognition cameras) during criminal proceedings. To use this procedure, the offence must be specified in section 20(2), which can be amended by order. Article 3 amends section 20(2) to allow for evidence of offences relating to breaches of the new restrictions created by this Order and the No.2 Amendment Order 2020 to be admitted through this procedure.
- 7.3 Part 3 of the 1988 Act governs the fixed penalty notice regime, which allows for specified road traffic offences to be dealt with at the roadside through a fine that is payable within a set period. Part 3A of the 1988 Act allows a financial penalty deposit to be taken immediately at the roadside from a person without a UK address who is believed to have committed a specified offence. Article 4 of this Order amends the Fixed Penalty Order 2000, S.I. No. 2792 to insert references to the new restrictions a contravention of which constitutes an offence and to set the amount of the penalty at £300. Article 3 of the No. 1 Amendment 2020 Order makes a similar amendment to the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009, S.I. No. 492, for financial penalty deposits and sets the amount of the deposit at £300.
- 7.4 The other instruments in this series are the Heavy Commercial Vehicles in Kent (No.1) (Amendment) Order 2020 and the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020 which amend the Heavy Commercial Vehicles in Kent (No.1) Order 2019 and the Heavy Commercial Vehicles in Kent (No. 2) Order 2019 respectively, and which have been laid before Parliament alongside the instrument.

## **8. Policy background**

### *What is being done and why?*

- 8.1 As set out in the Explanatory Memorandum to the Heavy Commercial Vehicles in Kent (No.1) (Amendment) Order 2020, at the end of the transition period there is at least initially a risk of some additional friction at the border, notably if goods arrive without having completed the necessary customs and other processes. It is thus important that the Government puts in place plans both to minimise the risk of disruption and to mitigate its impact should it occur.
- 8.2 The Government has worked with the Kent Resilience Forum to ensure its Kent traffic management plan, Operation Brock, is ready to manage that disruption, and to introduce the Check an HGV service, which is designed to reduce the volume of HGVs that travel to ports without the relevant documentation or making the necessary preparations for the range of EU import controls. The Government intends that use of the Check an HGV service would be mandatory for cross-Channel HCVs using the

Short Straits crossings from Kent to Hauts-de-France. Coupled with a strong compliance and enforcement regime, the Check an HGV service could help significantly reduce the number of unready HCVs reaching Kent. Consequently, this Order amends the No.3 2019 Order to require HCV drivers to have a KAP to drive on specific Motorways in Kent. It also allows for prioritisation of HCVs carrying single loads of specific goods, live or fresh seafood for human consumption and DOCs, in order to bypass the Operation Brock queues. This Order also clarifies who Local Haulier Permits (“LHP”) may be issued to in line with Kent County Council guidelines.

8.3 More specifically with regard to priority goods, the Government has determined that it is prudent (on a contingency basis) to make provision for commodities that meet two or more of the following criteria to be prioritised through the Operation Brock queues. These criteria are:

1) that the commodities are highly perishable and lose most or all of their economic value within 5 days (i.e. without additional refrigeration, freezing or other intervention, which would not be possible);

2) the perishable goods concerned are live animals and delays would cause animal welfare concerns if not moved in a timely manner; and

3) delays to the goods would give rise to a disproportionate economic impact on a geographical area of the UK.

8.4 As such, the No.3 2019 Order as amended by this Order allows for exports of single loads of fresh and live seafood for human consumption, and exports of single loads of DOCs (that is all poultry that is less than 72 hours old and has not yet been fed) to be prioritised through the Operation Brock traffic management system. These two commodities were deemed to meet two of the listed criteria. Following checks at a prioritisation site at Ebbsfleet to determine if a cross-Channel HCV driver is solely carrying one of the aforementioned commodities and that they are holding a valid KAP, they would be given a Priority Goods Permit that, if clearly displayed, would direct them to travel down the ‘priority route’ (the A2/M2, then A249 before joining the M20) and allow them to bypass the queues between junctions 8 and 9 of the M20 and the holding site at Sevington Inland Border Facility (if in use) to allow them to get to the ports rapidly. Bypassing the queues between junctions 8 and 9 without a Priority Goods Permit would also be an offence.

8.5 This Order also includes further amendments to the No.3 2019 Order to clarify that the provision for hauliers based in Kent to apply for a LHP applies only to hauliers based in East Kent and Faversham Town Council that hold a standard international ‘O’ licence and have at least 1 HCV. The LHP enables East Kent HGV drivers to reach the Channel Tunnel or Port of Dover using local roads so they can avoid incurring unnecessary delays and expense by having to go to the back of the Operation Brock queues when a traffic restriction period is in effect. Kent residents and local business that are not involved in international freight do not require an LHP.

## **9. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 9.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 but relates to the withdrawal of the United Kingdom from the European Union as it would apply in the event of significant cross-Channel travel disruption, including any disruption that may occur at the end of the Transition Period.

## **10. Consolidation**

- 10.1 There are no plans to consolidate the legislation amended by this instrument.

## **11. Consultation outcome**

- 11.1 The Department has consulted with the Kent Resilience Forum, the haulage industry, and other key stakeholders over the past several months on redeploying Operation Brock for the end of the Transition Period, the mandating of the use of the Service for those using the Short Straits and the proposed use of Automatic Number Plate Recognition technology to support enforcement. A three-week national consultation was run between 3rd August and 23rd August 2020. Over half the respondents agreed with each of the proposals, and the outcome of that consultation is summarised in section 10 of the explanatory memorandum to the No. 1 2020 Order. A copy of the HMG consultation response, which provides a fuller analysis of the responses, was published on 22nd October 2020 and is available at:  
<https://www.gov.uk/government/consultations/enforcing-operation-brock-plans-in-2021>

## **12. Guidance**

- 12.1 Recognising the importance of hauliers and haulier managers being made aware of the new guidelines of Check and HGV service we will continue to work closely with the sector and will be publishing an updated Haulier Handbook in the Autumn of 2020 with online and hard copies will be available in multiple different languages. We will also have 45 information and advice sites in motorway services operational across Great Britain from November.
- 12.2 Once published, hard copies of this guidance will be available for inspection or to be collected between 10am and 4pm at the offices of the Department for Transport, 33 Horseferry Road, London, SW1P 4DR.

## **13. Impact**

- 13.1 There no significant, lasting impact on business, charities or voluntary bodies. The impact to hauliers would stem from cross-Channel disruption and familiarisation with the Check an HGV service, rather than the traffic measures contained in this series of instruments. The traffic management measures proposed would only be used in the run up to and during temporary activations of Operation Brock and the Check an HGV service will have limited burden on industry once familiarised with the Check an HGV service. The impact of not using the Check an HGV service outweighs the cost to drivers/hauliers for using the Check an HGV service. The impact of these measures will not be significant as fines or penalties incurred for non-compliance are not considered within the cost to business.
- 13.2 There is no, or no significant, impact on the public sector.

- 13.3 A light touch Impact Assessment is submitted alongside the Enforcing Operation Brock consultation response and is available at:  
<https://www.gov.uk/government/consultations/enforcing-operation-brock-plans-in-2021>
- 13.4 Once published, hard copies of this impact assessment will be available for inspection or to be collected between 10am and 4pm at the offices of the Department for Transport, 33 Horseferry Road, London, SW1P 4DR.

#### **14. Regulating small business**

- 14.1 The legislation applies to activities that are undertaken by small businesses.
- 14.2 The vast majority of HCV drivers travelling via the Channel Tunnel and Port of Dover work for foreign hauliers, although there are a small number of small and medium-sized businesses in the United Kingdom that undertake this activity. All cross-Channel HCV drivers must carry the required customs and import/export documentation as required by the EU's import controls and show them when asked. If they cannot show the documentation, they risk being stopped by the French authorities and could thus cause delay and disruption to the Short Straits and queues on the roads of Kent. This is true regardless of whether or not the HCV driver works for a small and medium sized business. The Check an HGV service helps HCV drivers understand if the trader has given them the necessary documentation, and given the importance of the Short Straits crossing, the Government has chosen to make its use mandatory for those travelling through Kent. It would not be appropriate to give any HCV driver an exemption from needing to use the Check an HGV service, and there is no mechanism that could meaningfully reduce the impact of these proposals on small and medium businesses without compromising the objectives of this legislation.

#### **15. Monitoring & review**

- 15.1 A statutory review clause is not included in this series of instruments as the substantive provisions will cease to have effect on 31st October 2021. In accordance with the requirements of the Small Business, Enterprise and Employment Act 2015, Rachel Maclean MP, Parliamentary Under Secretary of State, has made the following statement:

“Having had regard to the Statutory Review Guidance for Departments published under section 31(3) of the Small Business, Enterprise and Employment Act 2015, in my view, it is not appropriate or necessary to provide for a review of these provisions as the substantive provisions will cease to have effect after a short and fixed period of time.”

#### **16. Contact**

- 16.1 Mallory Sedgwick at the Department for Transport, Telephone: 07977426480 or email: Mallory.Sedgwick@dft.gov.uk can be contacted with any queries regarding the instrument.
- 16.2 Richard Thomas and Helen McGill, jobshare Deputy Directors for Future EU Roads Relationship, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 16.3 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard