

EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 3) (AMENDMENT) (NO. 2) ORDER 2021

2021 No. 973

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is one of three Orders that update legislation on the traffic management measures for heavy commercial vehicles (HCVs) that apply in Kent when there is substantial disruption at the Port of Dover and/or Eurotunnel.
- 2.2 This instrument amends the Heavy Commercial Vehicles in Kent (No. 3) Order 2019 (as amended by the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020) and the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021.
- 2.3 The related instruments amend;
 - the Heavy Commercial Vehicles in Kent (No. 1) Order 2019 as amended by the Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2020; and
 - the Heavy Commercial Vehicles in Kent (No. 2) Order 2019 as amended by the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020.
- 2.4 Together, this legislation underpins the Kent Resilience Forum (“KRF”)’s Operation Brock plans to respond to disruption at the Port of Dover and Eurotunnel which adversely affects roads in Kent. When activated, Operation Brock aims to keep HCVs (weighing 7.5 tonnes and over) on cross-Channel journeys on designated routes to the Port of Dover and Eurotunnel (“the Short Straits”). The legislation was first put in place in 2019 as a contingency in the event of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover, updated in 2020 in preparation for the end of the EU transition period, and again in 2021 in response to the COVID-19 pandemic
- 2.5 These amending Orders will remove the sunset clauses (i.e. expiry dates) in the existing legislation, meaning that Operation Brock can continue to be an effective response to unforeseen disruption (such as bad weather or industrial action) in the future. The Orders will remove requirements specifically designed for the UK’s exit from the EU and other provisions that are not needed beyond 31st October 2021. However, powers conferred on traffic officers to identify and direct cross-Channel HCVs will be retained within the No. 1 Order, as will measures to assist local hauliers in the No. 2 and No. 3 Orders.
- 2.6 In addition, the provision to allocate permits for HCVs carrying goods specified as a priority via the Channel Tunnel or the Port of Dover to be issued with a priority

goods permit will be removed. The amendment will also remove the power to issue penalties for those HCV drivers not carrying only priority goods who take advantage of this as the provision will cease to exist.

- 2.7 Provisions put in place following the international border closures in December 2020 (such as HCV driver COVID-19 testing taking place outside Kent to alleviate pressures within the county, and the Expedited Returns Scheme (“ERS”) that allows empty food vehicles travelling from the UK to the European Union to be prioritised through the Kent traffic management system) and prioritisation for goods to Gibraltar, have also been removed as the circumstances which required them have now changed and they are not anticipated to be required beyond 31st October 2021.
- 2.8 This Order also updates the roads that may be accessed by HCVs once Operation Brock is activated as well as removes permits for the M26 and cross-Channel journeys that are no longer part of these plans.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 In its 37th Report of Session 2019 – 21, the Joint Committee on Statutory Instruments (“JCSI”) reported article 2(6)(a) of the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020 for defective drafting, which inserted articles 7(C1) and (D1) in the 2019 Order as part of a permit scheme for priority goods. This Order omits articles 7(C1) and (D1), as well as provisions relating to the wider permit scheme.
- 3.2 In paragraph 4.2 of its 46th Report of Session 2019 – 21, the JCSI mistakenly reported regulation 1(2)(b)(vi) of the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021 for defective drafting. As there was no such provision in that Order (the reference to that provision appears to have been mistakenly copied from the previous entry in the report) and as the remainder of paragraph 4.2 reported the Order on the ground that there was unjustifiable delay in laying it before Parliament, the Department has taken no further action.

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. European Convention on Human Rights

- 5.1 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) (No. 2) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 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.

- 6.2 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 reflect amendments to the restrictions imposed by the 2019 Orders.
- 6.3 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 reflect amendments made to the restrictions imposed by the 2019 Orders. Article 3 of the No. 1 Amendment Order 2021 makes a similar amendment to the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009, S.I. No. 492, for financial penalty deposits.
- 6.4 The other instruments in this series are the Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021 and the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021 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.

7. Policy background

What is being done and why?

- 7.1 As set out in the Explanatory Memorandum to The Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021, the intent of this legislative update is to retain measures that underpin the KRF's long-term plan, Operation Brock, to manage the types of disruption to cross-Channel traffic that have occurred in the past and may occur in the future, such as bad weather or industrial action.
- 7.2 The main changes made by this instrument are to remove a number of provisions that are no longer required. In the 2020 Orders the Government implemented a provision to make it a legal requirement for an HCV driver travelling through Kent to the Short Straits to have a valid Kent Access Permit ("KAP"), when Operation Brock was active. Any hauliers not meeting the requirement risked a £300 fine. In certain circumstances involving border readiness checks in Kent, drivers would also have needed to get a cross-Channel permit – more commonly referred to as a 'Brock permit' – to access the ports.
- 7.3 These permit arrangements were intended as temporary measures to avoid additional delays at the border, by ensuring HCV drivers had the correct paperwork before setting off and allowing them to move quickly to and through the Short Straits. Consequently, this Order amends the No. 3 2019 Order to no longer require HCV drivers to have a KAP in order to drive on specific motorways in Kent. This decision is supported by the consistently high levels of border readiness exhibited by hauliers since the end of the EU transition period.

- 7.4 The 2020 Orders offered a contingency plan that provided HCVs carrying certain commodities the opportunity to bypass part of the Operation Brock system if significant delays occur. The goods eligible for prioritisation were restricted to single loads of live or fresh seafood products for human consumption and day-old chicks. Hauliers would be given a Priority Goods Permit that would direct them to travel down the 'priority route' (the A2/M2, then A249 before joining the M20) and allow them to bypass the traffic management 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 Kent ports rapidly. Bypassing the queues between junctions 8 and 9 without a Priority Goods Permit would be an enforceable offence.
- 7.5 Obtaining a Priority Goods Permit, and therefore prioritisation of these goods, required use of the KAP, which was discontinued in April 2021. The Government has determined that it is no longer necessary to make contingency provisions for commodities, as there is no longer such a compelling case for prioritisation of some goods and not others. This is because the prioritisation of goods scheme was created in anticipation of potential disruption to traffic due to the end of the transition period. The potential threat has now passed as traffic continues to flow smoothly through Kent. Therefore, this Order removes the prioritisation of goods scheme from the No. 3 Order.
- 7.6 In January 2021, further amendments were made to the No. 3 Order to introduce provisions for the ERS, which allows certain empty HCVs to use the contraflow in the event of significant disruption at the border. This is to prevent disruption to UK food supplies and food supplies to Gibraltar by ensuring that HCVs used for those cargoes could return to the EU to pick up fresh loads with minimal delay.
- 7.7 This provision was designed in the context of food supply disruption caused by closure of the international border in December 2020 and has not been implemented since its creation. Therefore, the Government has decided that the ERS provision is no longer an effective contingency plan for future unscheduled disruption events. The ERS has been removed from the 2021 amending Orders.
- 7.8 Neither the prioritisation nor ERS scheme have been deployed to date. The government will, however, keep future disruption risks under close review and take action as necessary to safeguard key supply chains, including through seeking further amendments to legislation if required.
- 7.9 In January 2021, a further amendment was made that would allow Ministers to require HCV drivers leaving the UK via the Channel Tunnel at Folkestone or the Port of Dover to be in possession of proof of a negative COVID-19 test result, timed at no more than 72 hours before their expected departure time from Dover or the Channel Tunnel. Drivers would need such proof before using the M20 or M2 to access the Port of Dover or the Channel Tunnel.
- 7.10 The provision was intended to reduce potentially overwhelming pressure on testing sites in Kent. In the event, the powers have not been required, as drivers obtained tests outside Kent in sufficient numbers without the need for legislative intervention. This provision is therefore no longer required and does not need to be reinstated after it expires on 31st October 2021. The government will continue to monitor international border COVID-19 testing requirements as the pandemic develops and consider legislative requirements relating to traffic management accordingly.

- 7.11 The Operation Brock traffic management plans previously included a provision for permits to be provided for HCVs being temporarily held on the M26 motorway. These plans are no longer part of Operation Brock so the M26 permit has been removed in these amending orders.
- 7.12 This Order also restricts HCV access between Junctions 5 and 7 of the M2 during a traffic restriction period, unless the vehicles are making local deliveries or hold a Local Haulier Permit. This is because, as laid out in the Explanatory Memorandum to the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021, HCVs will not be able to access local roads when the Operation Brock restrictions are activated. This section of the M2 leads to these local roads after the final junction that connects the M2 with the obligatory Brock traffic management system on the M20, so a restriction is required to avoid unnecessary journeys on the M2 beyond Junction 5. The location of the traffic signs used to trigger the traffic restriction period has been amended to reflect updated operational requirements.
- 7.13 Further details of the 2019 Orders and the previous amending Orders can be found in their Explanatory Memoranda available online at:
- the No. 1 2019 Order, <https://www.legislation.gov.uk/uksi/2019/1388/memorandum/contents>
 - the No. 2 2019 Order, <https://www.legislation.gov.uk/uksi/2019/1394/memorandum/contents>
 - the No. 3 2019 Order, <https://www.legislation.gov.uk/uksi/2019/1210/memorandum/contents>
 - the No. 1 (Amendment) 2020 Order, [The Heavy Commercial Vehicles in Kent \(No. 1\) \(Amendment\) Order 2020 - Explanatory Memorandum \(legislation.gov.uk\)](#)
 - the No. 2 (Amendment) 2020 Order, [The Heavy Commercial Vehicles in Kent \(No. 2\) \(Amendment\) Order 2020 - Explanatory Memorandum \(legislation.gov.uk\)](#)
 - the No. 3 (Amendment) 2020 Order, [The Heavy Commercial Vehicles in Kent \(No. 3\) \(Amendment\) Order 2020 - Explanatory Memorandum \(legislation.gov.uk\)](#)
 - the No. 3 (Amendment) 2021 Order, [The Heavy Commercial Vehicles in Kent \(No. 3\) \(Amendment\) Order 2021 - Explanatory Memorandum \(legislation.gov.uk\)](#)

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union. Although the instrument would apply in the event of significant cross-Channel travel disruption, such as bad weather events, this could also include delays from customs checks at the international borders in Kent, for example. The Order also removes provisions specifically aimed at the UK's withdrawal from the EU.

9. Consolidation

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

10. Consultation outcome

- 10.1 The Department has consulted with the Kent Resilience Forum, the haulage industry, the relevant Short Straits ports, and other key stakeholders over the past several months on retaining Operation Brock as a contingency measure in the event of disruption, removing border readiness provisions and removing the sunset clause from the Orders. A four-week national consultation was run between 26th May and 20th June 2021. The consultation was run on a national basis as all cross-Channel HCVs

taking goods through the Short Straits would be required to adhere to Operation Brock powers regardless of where they would start their journey from. Key affected stakeholders in Kent, such as Kent County Council, the Port of Dover and Eurotunnel, local authorities, local resilience forums, and freight associations were made aware of the consultation when it launched.

- 10.2 The outcome of the consultation is summarised in section 10 of the explanatory memorandum to the No. 1 2021 Order.
- 10.3 A copy of the HMG consultation response, which provides a fuller analysis of the responses, was published on 9 August 2021 and is available at: <https://www.gov.uk/government/consultations/operation-brock-removing-sunset-clauses-and-provisions-for-eu-exit-and-covid-19-pandemic-from-existing-traffic-management-legislation/outcome/removing-sunset-clauses-and-provisions-for-eu-exit-and-covid-19-pandemic-from-existing-traffic-management-legislation-government-response>

11. Guidance

- 11.1 Recognising the importance of hauliers, and haulier managers being made aware of the new border requirement guidelines, we continue to work closely with the sector to maintain an updated Haulier Handbook with online and hard copies available in multiple languages. The Government also have a network of Information and Advice sites operational in motorway service areas (currently at 17 locations) across Great Britain and are planning to launch sites in the EU as well ahead of the introduction of UK import controls in October 2021 and January 2022.
- 11.2 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.

12. Impact

- 12.1 There is no significant, lasting impact on business, charities or voluntary bodies. The impact to hauliers would stem from cross-Channel disruption, rather than the traffic measures contained in this series of instruments. The traffic management measures proposed would only be used during temporary activations of Operation Brock. 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.
- 12.2 There is no, or no significant impact on the public sector.
- 12.3 A De Minimis Assessment has been carried out as the amendments to the regulations do not qualify for an Impact Assessment.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The vast majority of HCV drivers travelling via the Channel Tunnel and Port of Dover work for foreign hauliers, although there is a small number of small and medium-sized businesses in the United Kingdom that undertake this activity.
- 13.3 The impact of this legislation on small businesses is minimal, as the amendments will remove provisions that were previously seen as a potential administrative burden to

small businesses, such as obtaining proof of a negative COVID-19 test before entering Kent and acquiring a Kent Access Permit through the Check an HGV Service.

- 13.4 The Local Haulier Permit will continue to be a provision in the legislation, enabling local hauliers to continue to operate in the event of disruption without incurring additional costs and delays.

14. Monitoring & review

- 14.1 A statutory review clause is not included in this series of instruments as the amended legislation is designed to serve as the long-term plan for traffic management in Kent in the event of disruption. 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 are not expected to have significant impacts on small businesses.”

15. Contact

- 15.1 Emma Torstenson at the Department for Transport, Telephone: 07977418692 or email: Emma.Torstenson@dft.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Richard Thomas and Helen McGill, job-share Deputy Directors for Future EU Roads Relationship, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rachel Maclean MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.