

EXPLANATORY MEMORANDUM TO

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

2021 No. 988

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 instrument is one of three Orders that update the 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. 2) Order 2019 (as amended by the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020).
- 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) Order 2020; and
 - 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 (ii) the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021.
- 2.4 The original 2019 legislation is referred to below as “the 2019 Orders”, the 2019 Orders as amended are referred to as “the current Orders” and previous amending Orders as “the previous Orders”.
- 2.5 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.
- 2.6 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.
- 2.7 These amending 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.

- 2.8 The No. 2 Order modifies the roads included as approved routes that a cross-Channel HCV may take to the ports when Operation Brock is in force; removes the requirement for a cross-Channel HCV to have a valid Kent Access Permit (“KAP”) when using the local road network in Kent; and continues to allow an East Kent and Faversham Town Council based cross-Channel HCV driver holding a Local Haulier Permit to use local roads when Operation Brock is active, when they would be otherwise restricted to using the motorway network when the traffic management plans are deployed.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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. 2) (Amendment) Order 2021 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 Articles 3 and 4 of the No.2 2019 Order, as amended by this Order, rely upon a power conferred on the Secretary of State by section 20 of the Road Traffic Regulation Act 1984, that allows for a restriction to be imposed on roads in a wide area (unlike traffic regulation orders which only apply to named roads) and across multiple traffic authorities as the Secretary of State sees fit. The amendments allow the No. 2 Order to remain in force indefinitely.
6.2 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. 3) (Amendment) (No. 2) Order 2021, which have been laid before Parliament alongside this instrument. All three Orders amend the 2019 Orders (as amended by the previous amending Orders).

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 plans to manage the types of disruption to cross-Channel traffic that have occurred in the past and may occur in the future. It is thus important that the Government maintains plans both to minimise the risk of disruption and to mitigate its impact should it occur. Removing the sunset provisions currently in the legislation will mean the traffic management plans remain available in the long-term.

- 7.2 The Government has worked with the KRF to ensure its Kent traffic management plan, Operation Brock, is ready to manage that disruption. The No. 2 2019 Order supports Operation Brock by restricting access to the local road network in Kent (i.e. most roads in Kent except for the motorway network) for HCVs leaving Great Britain via the Channel Tunnel or the Port of Dover, should a traffic restriction period be in force.
- 7.3 The restriction on driving a cross-Channel HCV on the local road network in Kent during a traffic restriction period set out in the No. 2 2019 Order is retained. However, some local roads were excluded from the restriction. This Order modifies the specified roads excluded from the restriction to reflect changes in the operational plans that underpin Operation Brock. The government leased Manston Airfield to the end of June 2021 to provide the KRF with additional HGV holding capacity at the end of the EU transition period. Roads leading to Manston were excluded from the restriction to allow HGVs to access Manston. These roads have now been removed from the exclusion as Manston is no longer part of the traffic management plan since the end of the government lease. Routes to the Inland Border Facilities at Ebbsfleet and Sevington have been excluded from the restriction on use of local roads to allow HGVs to access these facilities.
- 7.4 The 2019 Order also provides that the driver of a cross-Channel HCV normally based at an operating centre in East Kent or Faversham Town Council and in possession of a valid Local Haulier Permit which bears the address of that operating centre in East Kent or Faversham Town Council is not subject to the restriction on driving on the local road network set out in article 3 of the No. 2 2019 Order. The Local Haulier Permits are retained in these amending Orders. These measures allow local hauliers to take direct routes to the ports rather than backtracking to join the Operation Brock routes via the M20.
- 7.5 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/ukxi/2019/1388/memorandum/contents>
 - the No. 2 2019 Order, <https://www.legislation.gov.uk/ukxi/2019/1394/memorandum/contents>
 - the No. 3 2019 Order, <https://www.legislation.gov.uk/ukxi/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 any 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 worked 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 9th 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, the Department continues to work closely with the sector to maintain an updated Haulier Handbook with online and hard copies available in multiple languages. The Department 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.