

## **EXPLANATORY MEMORANDUM TO**

### **THE M20 MOTORWAY (JUNCTIONS 7 TO 11) (TEMPORARY RESTRICTION AND PROHIBITION OF TRAFFIC) REGULATIONS 2023**

**2023 No. 1077**

#### **1. Introduction**

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

#### **2. Purpose of the instrument**

- 2.1 This instrument concerns the Kent traffic management system known as Operation Brock, which is deployed during times of disruption at the Port of Dover and/or the Channel Tunnel ('the Short Straits').
- 2.2 This instrument will enable National Highways Limited ('NHL') to continue to deploy Operation Brock on the M20 motorway in Kent after Temporary Traffic Regulation Order ('TTRO') 2022 No.933, which currently facilitates this, expires on 31st December 2023.
- 2.3 This instrument will regulate the way the M20 between Junctions 7 to 11 can be used when Operation Brock is deployed. This instrument does not change the way Operation Brock is deployed, instead it is a change to the legal framework to allow Operation Brock to be deployed safely and includes current measures such as which lanes heavy commercial vehicles ('HCVs') and other vehicles can use, related speed limit restrictions and use of traffic signs to indicate such restrictions.

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

- 3.1 None.

#### **4. Extent and Territorial Application**

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

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 Section 17 of the Road Traffic Regulation Act 1984 ('1984 Act') allows the Secretary of State to make regulations governing the use of special roads (primarily motorways). This instrument regulates traffic using the M20 motorway in Kent during periods when cross-Channel travel disruption is likely or occurring. Contravention of this instrument is an offence under section 17(4) of the 1984 Act.

## 7. Policy background

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

- 7.1 The Short Straits crossings are a vital connection to the Continent for both passengers and freight, accounting for 59% of UK trade with the EU (89% of all accompanied HCVs). The very high volume of traffic using the crossings means queues build quickly when disruption occurs, such as bad weather, road traffic collisions or strikes. Any disruption to these routes can lead to delays at the Short Straits terminals. Severe delays can lead to significant queues of HCVs on the M20 motorway and the trunk roads leading to the Short Straits crossings. These delays significantly impact other Kent-bound traffic and local businesses. Operation Brock is a contingency measure designed to keep the M20 and other local roads open and moving in such circumstances.
- 7.2 Operation Brock is not permanently in place but is activated and de-activated as necessary. The decision to activate it is made by the Kent Resilience Forum, comprised of Kent Police and emergency services, Kent County Council, port representatives, NHL and others. When Operation Brock is deployed, regular M20 traffic is transferred to a contraflow on the London-bound carriageway, whilst HCVs bound for the Short Straits are directed onto the coastbound carriageway. These HCVs travel on the hard shoulder and the third lane of the coastbound carriageway, with the remaining two lanes reserved for emergency vehicles, maintenance vehicles and amenities. As space becomes available at the terminals, the HCVs are released using traffic signals. Traffic restrictions are also imposed on the A2 and A2070 when Operation Brock is deployed.
- 7.3 Parts of Operation Brock are currently implemented by NHL using TTRO 2022 No.933. This is due to expire on 31st December 2023. TTRO 2022 No.933 will be revoked simultaneously with this instrument coming into force, NHL will also bring into force Traffic Regulation Orders ('TROs') to enable Operation Brock to continue to be deployed on the A2 and A2070 after the TTRO is revoked. The restrictions in the TROs will replicate the A road restrictions in the TTRO, so the TROs will be functionally identical. As TROs cannot impose certain restrictions on motorways, an SI is required to enable NHL to continue to deploy Operation Brock on the M20 after the TTRO expires. This instrument will replace TTRO 2022 No.933 as the legal mechanism for the deployment, operation and enforcement of the Operation Brock M20 traffic management measures. This instrument will not change the way Operation Brock currently operates or the way in which it is enforced. Instead, it provides a legal mechanism to enable NHL to continue to deploy Operation Brock after the TTRO expires.
- 7.4 This instrument enables the following restrictions when Operation Brock is deployed:
- All cross-Channel bound HCVs travel on the coastbound M20 motorway, where a 30mph speed limit is in place. They are held at the traffic lights near Junction 9 of the M20 and released when there is capacity available at the Short Straits terminals.
  - All other vehicles (including Kent-bound HCVs that are not destined for the Short Straits) travel on the M20 motorway using the contraflow on the London-bound carriageway. The contraflow is implemented using a moveable concrete barrier which is installed by NHL.

- The speed limit through the contraflow on the London-bound carriageway is 50mph in both directions.
- Vehicles wider than two metres are unable to use certain lanes.
- The Operation Brock traffic management restrictions are indicated by traffic signs, including traffic lights. The restrictions are enforced by Kent Police.

### ***Explanations***

#### What did any law do before the changes to be made by this instrument?

- 7.5 Prior to this instrument, TTROs have been used to enable NHL to deploy Operation Brock on the M20 motorway, A2 and A2070. The current TTRO expires on 31st December 2023. When the TTRO expires, TROs will be used to enable NHL to deploy Operation Brock on the A2 and A2070. As TROs cannot impose certain restrictions (such as speed restrictions) on motorways, this instrument is required to enable NHL to deploy Operation Brock on the M20 after the current TTRO expires.

#### Why is it being changed?

- 7.6 The TTRO currently used to enable NHL to deploy Operation Brock on the M20 will expire on the 31<sup>st</sup> December 2023. NHL is not able to extend the current TTRO and so this new legal mechanism enables NHL to continue to implement Operation Brock on the M20 when required.

#### What will it now do?

- 7.7 This instrument will replace the current TTRO as the legal mechanism for NHL to continue to implement Operation Brock on the M20 when required. This instrument will not change the way in which Operation Brock currently operates or how it is enforced on the M20, all restrictions and enforcement provisions will remain the same.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 This instrument does not consolidate other legislation.

## **10. Consultation outcome**

- 10.1 The consultation for the proposed implementation of this instrument took place between 29th June 2023 and 27th July 2023. A consultation document was issued by the Department for Transport to stakeholders on 29th June 2023 which provided detailed information on this instrument. This consultation document was also published on the gov.uk website.
- 10.2 Consultees included members of the emergency services, road user groups, local authorities and MPs.
- 10.3 The consultation provided an opportunity for consultees to comment on the proposed instrument. The consultation was also open to public participation through the gov.uk website and the consultation document can be accessed using the following link:

<https://www.gov.uk/government/calls-for-evidence/proposed-instrument-to-regulate-traffic-on-m20-motorway-call-for-views><sup>[1]</sup>.

- 10.4 The Department encouraged specific consultees to register their views on the introduction of this instrument. Local MPs were also made aware of the consultation. A total of six responses to the consultation were received. The number of responses was in line with expectations, given that this instrument will not change the way in which Operation Brock currently operates or the way in which it is enforced. Respondents represented a cross-section of stakeholders, including Kent County Council, Kent Police, a trade association representing the UK logistics industry, a local business and two local individuals. Respondents were supportive of the proposed instrument. Most commented that a permanent solution is required to ease the traffic disruption caused when there are delays at the Port of Dover and the Channel Tunnel. The government recognises that Operation Brock does not totally remove the disruption for local residents and businesses. The Department is working with Kent stakeholders to explore longer term options to replace, or reduce the use of, Operation Brock. In addition, the Kent Resilience Forum works to continually improve the decision-making process for when Operation Brock is deployed and the wider processes that support it.
- 10.5 The Department addressed and responded in writing to all the issues and concerns raised by respondents. The post-consultation report concluded that this instrument should be implemented. The report can be accessed using the following link: <https://www.gov.uk/government/calls-for-evidence/proposed-instrument-to-regulate-traffic-on-m20-motorway-call-for-views><sup>[2]</sup>. Stakeholders will continue to receive updates and news on progress through the Department's website, media and press releases.

## **11. Guidance**

- 11.1 This instrument will replace the current TTRO as the legal mechanism for NHL to continue to implement Operation Brock on the M20 when required. This instrument will not change the way in which Operation Brock currently operates or is enforced on the M20, all restrictions and enforcement provisions will remain the same.
- 11.2 The Department will continue to work closely with the sector to ensure an understanding of the traffic management measures used to control freight traffic when there is disruption.

## **12. Impact**

- 12.1 There is no, or no significant, lasting impact on business, charities or voluntary bodies as the impact to hauliers would stem from cross-Channel disruption, rather than the measures contained in this instrument, and the measures would only be used during temporary activations of Operation Brock.
- 12.2 There is no, or no significant, impact on the public sector.

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<sup>[1]</sup> <https://www.gov.uk/government/calls-for-evidence/proposed-instrument-to-regulate-traffic-on-m20-motorway-call-for-views>

<sup>[2]</sup> <https://www.gov.uk/government/calls-for-evidence/proposed-instrument-to-regulate-traffic-on-m20-motorway-call-for-views>

- 12.3 A full Impact Assessment ('IA') has not been prepared for this instrument because a De Minimis Assessment ('DMA') has been carried out instead. This is because the changes imposed by the instrument do not qualify for a full IA.
- 12.4 The DMA used existing evidence to assess the impact of Operation Brock on business users' journey times. This evidence highlighted improved journey times for users during times of disruption when Operation Brock is in place.
- 12.5 The Equivalent Annual Net Direct Cost to Business ('EANDCB') was also calculated. This calculates the costs that business users will incur as a result of the proposed instrument. An IA is required where the EANDCB value is greater than +/-£5 million. The EANDCB value for the proposed instrument is calculated to be -£1.09 million. Therefore, an IA is not required.
- 12.6 Some assumptions were applied to the original data; these have been considered reasonable and do not impact the certainty of the final output as they are in line with Transport Appraisal Guidance ('TAG') which is based upon HM Treasury Green Book principles. Further assumptions were made in the EANDCB calculations, which include that benefits will be equal in each year over the time period. There has been some uplift in the number of days from 2021 that Operation Brock has been in operation, which the calculations have taken account of. The assumption applied here was that each day Operation Brock is in operation has equal benefit. However, the overall approach follows latest Department guidance in the production of the EANDCB value.
- 12.7 The DMA also considered the impact of the instrument on small businesses and whether they would be disproportionately affected. It also assessed the wider social and environmental impact of the proposed instrument. The DMA concluded that these impacts are not material.

### **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 The vast majority of hauliers travelling via the Short Straits are foreign hauliers, although there are a small number of small and medium-sized businesses in the United Kingdom that undertake this activity. This instrument relieves congestion on the Kent road network when there are delays by allowing vehicles other than cross-Channel bound HCVs to continue to use the M20. Therefore, this instrument improves overall outcomes. No specific action is proposed to minimise regulatory burdens on small businesses.

### **14. Monitoring & review**

- 14.1 The approach to monitoring this legislation is that the Department will monitor the regulations on an ongoing basis and review their effect again in five years; a report will be published towards the end of 2028.
- 14.2 A statutory review clause is included in the instrument.

### **15. Contact**

- 15.1 Elena McCulloch at the Department for Transport (telephone: 07814 068512 or email: [Elena.McCulloch@dft.gov.uk](mailto:Elena.McCulloch@dft.gov.uk)) can be contacted with any queries regarding the instrument.

- 15.2 Lydia Austen, Deputy Director for Border Response and Resilience at the Department for Transport can confirm that this explanatory memorandum meets the required standard.
- 15.3 Baroness Vere of Norbiton, Parliamentary Under Secretary of State at the Department for Transport can confirm that this explanatory memorandum meets the required standard.