EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 1) (AMENDMENT) ORDER 2020

2020 No. 1386

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 amending Order is one 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'), to extend the sunset clauses of the existing Orders 2019 from 31st December 2020 to 31st October 2021 so that Heavy Commercial Vehicle (HCVs) traffic can continue to be regulated until that point if necessary. In addition, the amending orders add new requirements for drivers of HCVs, i.e. goods vehicles weighing more than 7.5 tonnes, to obtain a valid Kent Access Permit ("KAP") from the 'Check an HGV is Ready to Cross the Border service' (the "Check an HGV service") should they wish to take goods from Great Britain to the EU via the Channel Tunnel or the Port of Dover and provides for penalties to be issued to HCV drivers who do not have a valid KAP. In addition, HCVs carrying only priority goods via the Channel Tunnel or the Port of Dover will be issued with a priority goods permit which will reduce the amount of time these vehicles will spend going through Kent and penalties will be issued for those HCV drivers not carrying only priority goods who take advantage of this.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Although this instrument will probably come into force very soon after it is made, it and the other 2020 Orders will not have any effect on drivers of goods vehicles in Kent until 1st January 2021 as that date is the earliest on which the restrictions on access to the motorways and local roads in Kent can be deployed.

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 The territorial application of this instrument varies between provisions.

3.3 Article 2 applies in England and Wales only (see section 100 of the Traffic Management Act 2004). The enabling powers relied upon for article 3 extend to England and Wales and Scotland (see section 99 of the Road Traffic Offenders Act 1988) and the territorial application of article 3 is not limited either by the relevant Act or by this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland, except for article 2 which extends to England and Wales only.

4.2 The territorial application of this instrument is England and Wales and Scotland, with the same exception.

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. 1) (Amendment) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This Order is linked to the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020 and the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020. All three Orders amend the 2019 Orders to extend the sunset provisions of those Orders so that they remain in force until 31st October 2021. This will enable the HCV traffic management arrangements enabled by the 2019 Orders to be available for use at the end of the transition period. This Order also amends the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 to allow a financial penalty deposit of £300 to be taken immediately at the roadside from a person without a United Kingdom address who is believed to have committed the offence of contravening the new restrictions created by the amendments made to the other 2019 Orders.

7. Policy background

What is being done and why?

7.1 At the end of the transition period, the EU will impose full import controls on goods being exported from Great Britain to the EU. Drivers taking goods from Great Britain to the EU will need to carry customs documentation with the goods. Some goods may also need to be accompanied by import/export documentation. While the trader exporting the goods is expected to provide the documentation, the driver will need to show this on arrival at the EU port. Without this documentation, drivers' risk being stopped by the EU authorities, fined, having the cargo seized or destroyed, or returned to Great Britain. In some cases, drivers without the correct documentation may not be allowed to board services departing from Great Britain.

7.2 This could lead to delays and disruption at the EU ports, with consequential delays in the UK. The Short Straits crossing from Kent to Hauts de France is particularly vulnerable due to the volume of HCVs using that route. The Government's reasonable worst-case scenario suggests that there might a freight flow of 60% to 80% of usual volumes at the short Channel crossing in the weeks following the end of the transition period, and that could lead to queues of up to 6,500 HCVs for January 2021 rising to 7,000 in February 2021 in Kent.

7.3 While this risk materialising is not inevitable, the Government is responsibly developing plans to manage the risk of any delays. Therefore, the Government is working with the Kent Resilience Forum[1] to deploy the traffic management scheme for cross-Channel HCVs (i.e. those HCVs taking goods from Britain to the EU) in Kent called Operation Brock. This will use a contraflow queueing system between Junctions 8 (Maidstone (East)) and 9 (Ashford) of the M20 (established using a quick moveable barrier being installed by Highways England), and off-road HCV holding sites to hold cross-Channel HCVs. Operation Brock in 2021 is, in effect, largely the same as the deployment of Operation Brock planned for the possible late 2019 no deal EU withdrawal which was underpinned by the 2019 Orders but wasn't called upon.

7.4 Further details of the 2019 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

7.5 These 2019 Orders gave powers to traffic officers to direct cross-Channel HCVs to use specific roads and prevented drivers of those vehicles from using local roads. Additionally, the 2019 Orders allowed cross-Channel HCV drivers to be fined £300 if they did not comply with those rules (using Fixed Penalty Notices for UK drivers, and Financial Penalty Deposit Notices for non-UK drivers). As the 2019 Orders were subject to a sunset clause the Heavy Commercial Vehicles in Kent (No.1) (Amendment) Order 2020, the Heavy Commercial Vehicles in Kent (No.2) (Amendment) Order 2020, and the Heavy Commercial Vehicles in Kent (No.3) Order 2020 (the '2020 Orders') will extend the date the 2019 Orders cease to have effect from 31 December 2020 to 31 October 2021. This allows Operation Brock to be enforced in 2021.

7.6 As part of the 2019 Operation Brock plans, the Government intended to undertake manual Border Readiness Checks ("BRCs") when cross-Channel HCVs were queued at Manston Airport and between Junctions 8 and 9 of the M20 (when the traffic restriction period, as set out in the No. 3 2019 Order, was in effect). These checks would identify those cross-channel HCVs deemed 'border ready' (in effect, carrying the border documentation consisting of necessary customs and import/export documentation required by the EU's import controls) which would be given a Cross-Channel Permit (commonly called a 'Brock Permit') and allowed to travel to the port. Those deemed 'unready' would be denied a Brock Permit and offered a choice of going to (or staying at) a holding site to try to become ready, or leaving to return to base or their trader. This was enabled by the No. 3 2019 Order that allowed traffic officers to compel HCV drivers to show border documentation. Those cross-Channel HCV drivers who evaded the queues and did not have a Brock Permit could also be

[1] The Kent Resilience Forum (KRF) is a partnership of organisations and agencies who work together to improve the resilience of Kent and Medway, and to ensure a coordinated response to emergencies that could have a significant impact on communities. This includes Kent County Council, Kent Police and Kent Fire and Rescue Service. A full list of KRF partners can be found online at: https://45e396db-c266-4178-a76b-fb863228dbbd.filesusr.com/ugd/8483bd_2b29f4a18d264aa08ba9055150c28aaa.pdf

stopped and fined £300 by the Kent Police and Driver and Vehicle Standards Agency (DVSA) officers.

7.7 For the end of the Transition Period, as part of plans to help hauliers and HCV drivers understand if they are carrying the right documentation, the UK Government is introducing the online Check an HGV service. This Service enables HCV drivers taking goods from Britain to the EU (or people acting on their behalf) at the point of loading their goods. They would submit details of their HCV's Vehicle Registration Number (VRN), their port of disembarkation in the EU, and make a short series of self-declarations to confirm the appropriate border documentation is in place and carried with the goods. Those deemed border ready would be advised by the webservice to continue their journey, and those deemed unready would be told they were missing documentation and that they should not take the goods until the trader has provided all the relevant documentation. Coupled with a strong compliance and enforcement regime, the Check an HGV service could help significantly reduce the number of unready HCVs reaching Kent. This would reduce pressure on Kent, the Port of Dover, Eurotunnel, and the Brock traffic management system, and make it easier for those HCVs that are border-ready to travel.

7.8 Given the potential risk and scale of impacts of unready HCVs in Kent, the Government proposes to make the use of the Check an HGV service mandatory for those in Kent. Use of the Check an HGV service by drivers using other ports will be encouraged but not mandatory. Cross-Channel HCV drivers will be required use the Check an HGV service to get a valid KAP to be able to use the M20 or the A2/M2 in Kent to reach the Channel Tunnel terminal at Cheriton or the Port of Dover. Only those deemed border ready would be issued a KAP by the web service, and it would be valid for 24 hours to cover a single journey. Cross-Channel HCVs without a valid KAP, because they had failed to use the Check an HGV service or had travelled in contravention of advice from the web service that they were unready, could be stopped and fined £300. This has been achieved by including the new requirements to have a valid KAP in the No.2 and No.3 2019 Orders, as amended by the No.2 and No.3 2020 Orders respectively.

7.9 The No.3 2020 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 HCV 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.

7.10 The government has determined that it is prudent (on a contingency basis) to make provision for commodities that meet two of the following criteria to be prioritised through the Operation Brock traffic management systems. 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. As such, the No.3 2019 Order as amended by the No.3 2020 Order allows for single loads of fresh and live seafood for human consumption

exports, and exports of single loads of day old chicks (DOCs – all poultry that is less than 72 hours old and has not yet 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 would allow them to travel down the A2/M2, then A249 before joining the M20 and bypassing the queues between J8 and J9 and the holding site at Sevington IBF, to allow them to get to the port rapidly. Bypassing the queues between junctions 8 and 9 without a Priority Goods Permit would also be an offence subject to a £300 fine.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 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 disruption, including any disruption that may occur at the end of the transition period.

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 relevant Short Straits ports, 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 Check an HGV service for those using the Short Straits, and the proposed enforcement strategy. A three-week consultation on the package of measures contained within this No.1 2020 Order and the No. 2 and No. 3 2020 Orders was undertaken 3rd August 2020 to 23rd August 2020. The consultation was run on a national basis as all cross-Channel HCVs taking goods through the Short Straits would be required to use the Check an HGV service, regardless of where they are starting their journey. Key affected stakeholders in Kent, such as Kent County Council, the Port of Dover and Eurotunnel, and freight associations were made aware of the consultation when it launched.

10.2 A good level of response was received for which the Department is grateful. Responses from both individuals and organisations were broadly supportive of the proposals to redeploy Operation Brock on an enforceable basis (i.e. extend the sunset clauses), and to make the use of the Check an HGV service mandatory for those cross-Channel HCVs using the Short Straits. More than half the respondents agreed with those proposals, as well as proposals to retain the Local Haulier Permit, allow for prioritisation of fresh and live seafood and DOCs, and use Automatic Number Plate Recognition cameras to support the detection of cross-Channel HCVs without a valid KAP.

10.3 Some individuals responding to the consultation disagreed with the proposals as they did not support the UK leaving the EU. However, the UK has already left the EU, and it is only appropriate that the government takes steps to prepare for the end of the Transition Period. Some respondents asked if Light Commercial Vehicles (LCVs) such as vans and other goods vehicles under 7.5 tonnes were covered by the proposals

to have a KAP, with some wondering if haulage firms may switch over from using HCVs to LCVs as a way to avoid the new requirements. The Government does not believe that this is likely to be an issue given the large number of LCVs and drivers that would be needed to replace a single HGV, and there would still be the requirement of LCVs to be border compliant. Some organisations argued that other perishable goods should be prioritised, but they did not meet two of the three criteria set out at paragraph 7.11 and as such their prioritisation could not be justified.

10.4 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

11. Guidance

11.1 Recognising the importance of hauliers and haulier managers being made aware of the new guidelines of Check and HGV service, we 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 available in multiple different languages. We will also have 45 information and advice sites operational in motorway services across Great Britain from November.

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 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 during temporary activations of Operation Brock and the Check an HGV service will have a limited burden on industry once familiarised with the Check an HGV service. The impact of not using the Check an HGV service outweighs traffic disruption in Kent and 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.

12.2 There is no, or no significant impact on the public sector.

12.3 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

12.4 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.

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 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 causing 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.

13.3 The impact of this legislation is twofold. Firstly, cross-channel HCV drivers or the businesses that employ them will need to adapt to the new rules by using the Check an HGV service. The Check an HGV service will be quick and easy to use and help HCV drivers avoid expensive wasted or delayed journeys because they were not border ready. Second, it would impact on cross Channel HCV drivers who were attempting to circumvent the traffic management system by arriving in Kent when not border ready. If they could do this without the intervention allowed by these Orders, they will increase overall congestion on the road network and cause delays. This legislation would deter this and improve overall outcomes for all road users.

14. Monitoring & review

14.1 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."

15. Contact

15.1 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.

15.2 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.

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.