EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 1) (AMENDMENT) ORDER 2021

2021 No. 1206

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 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. 1) Order 2019 (as amended by the Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2020).

2.3 The related instruments amend:-

- the Heavy Commercial Vehicles in Kent (No. 2) Order 2019 as amended by the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020; and
- the Heavy Commercial Vehicles in Kent (No. 3) Order 2019 as amended by (i) 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 amending 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. 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.

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, 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, Trudy Harrison 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 2021 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 2021 and the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) (No. 2) Order 2021.

6.2 All three Orders amend the current Orders. The current Orders each include a sunset clause which is set to expire on 31st October 2021. These amending Orders remove the sunset clauses so that the legislation will remain in force, without annual revisions.

6.3 This Order also amends the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 to reflect amendments made to the restrictions imposed by the other 2019 Orders.

7. Policy background

What is being done and why?

7.1 The 2019 Orders were put in place to support the KRF's contingency traffic management measures ("Operation Brock") in anticipation of potentially significant transport disruption at Eurotunnel and Port of Dover when the UK left the EU. Operation Brock is designed to keep the M20 motorway in Kent open in both directions, with access to junctions, even in periods of severe and protracted disruption. The KRF decides when to deploy these measures and will only do so if the disruption to traffic flow at the Short Straits is significant enough to affect the Kent road network.

7.2 These plans were started in anticipation of the UK's exit from the EU and the resulting changes to customs documentation checks. A sunset clause was appropriate because the need for measures related to the UK's exit from the EU was time limited. However, the traffic management plans also apply to other unforeseen events (such as bad weather or industrial action). By removing the sunset provisions, the plans can continue to be deployed as a contingency measure to manage

significant disruption from any cause at the Kent ports from 1st November 2021 onwards.

7.3 These amending Orders simplify the legislation by removing provisions related to the UK's exit from the EU or COVID-19 that are no longer required. The current Orders give Ministers the power (when Operation Brock is active) to require HCV drivers travelling through Kent to the Short Straits to have a valid Kent Access Permit ("KAP"). They obtain this by confirming via a gov.uk website that they have the correct border documentation. Any hauliers not meeting the requirement risk a £300 fine. In certain circumstances, drivers would also need to get another permit (a cross-Channel permit) to access the ports.

7.4 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. These permits are no longer needed because of the consistently high levels of border readiness exhibited by hauliers since the end of the EU transition period. These amending Orders remove the provisions relating to the KAP and cross-Channel permits from the existing Orders.

7.5 The previous amending Orders added:

- a contingency that would have allowed HCVs carrying certain commodities to bypass part of the Operation Brock system. The commodities were single loads of live or fresh seafood products for human consumption and day-old chicks.
- provisions for an Expedited Return Scheme ("ERS"), which would have allowed certain empty HCVs to bypass part of the Operation Brock traffic management queue. This is to prevent disruption to food supplies by ensuring that HCVs used for those cargoes could return to the EU to pick up fresh loads with minimal delay.

7.6 Both prioritisation provisions were designed for the specific circumstances at the end of the EU transition. Neither of the schemes have been used. There is no longer such a compelling case for prioritisation of some goods and not others. Therefore, the ERS and the prioritisation of goods scheme have both been removed from the 2021 amending Orders. 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 legislation if required.

7.7 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 have proof of a negative COVID-19 test result, timed at no more than 72 hours before their expected departure time from Dover or via the Channel Tunnel. Drivers would need such proof before using the M20 or M2 to access the Port of Dover or the Channel Tunnel. 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.

7.8 The current Orders require HCVs (when Operation Brock is active) to use the M20 route to the Channel Tunnel and the Port of Dover. However, for HCVs based at operating centres in East Kent and Faversham this would mean backtracking away

from the ports to join the motorway. The current Orders therefore allow such HCVs to use local roads rather than the prescribed Operation Brock routes. The current Orders provide for such hauliers to receive Local Haulier Permits issued by Kent County Council. The Local Haulier Permits are retained in these amending Orders.

7.9 The overall intent of this legislative update is to retain those 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, reflecting the need for long-term stability in Kent traffic management arrangements.

7.10 The powers given to traffic officers to support Operation Brock have been retained in the No. 1 2021 Order.

7.11 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 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 KRF, the haulage industry, the relevant Short Straits ports, and other key stakeholders over the past several months on plans to retain 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 consultation received 14 responses. Whilst this figure is low, key stakeholders were notified of the consultation launch and respondents included stakeholders and members of the public. Key stakeholders were largely supportive of the proposals, with almost all respondents agreeing with proposals to remove the sunset clauses, the KAP and the prioritisation of goods scheme. Responses were also broadly in support of removing the additional provisions added in January 2021 (i.e. the ERS scheme and COVID-19 provision). The majority of responses agreed with the proposal to retain the Local Haulier Permit scheme for hauliers based in East Kent and Faversham. The Government therefore proceeded with the proposals outlined in the consultation.

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 scheme 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, Trudy Harrison 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 Trudy Harrison MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.