EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 1) ORDER 2019

2019 No. 1388

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 Order is part of a series of instruments to allow for the movement of cross-Channel heavy goods vehicles in Kent to be regulated during periods of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover. This instrument confers new powers on traffic officers that will enable them to identify cross-Channel heavy goods vehicles and control their movements in Kent. It also makes ancillary provision relating to enforcement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Article 2 of this instrument is the first exercise of the power under section 8 of the Traffic Management Act 2004 to confer further special powers on traffic officers. At present, no public official could effectively identify and direct a cross-Channel heavy goods vehicle circumventing the traffic management scheme for cross-Channel disruption known as Operation Brock (devised by the Kent Resilience Forum and implemented by Kent Police and Highways England). The new powers will be used to tackle non-compliance with the scheme, which would cause or contribute to severe traffic congestion, and cannot be exercised outside Kent.

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).

3.4 The enabling powers relied upon for all other provisions extend to England and Wales and Scotland (see section 99 of the Road Traffic Offenders Act 1988) and the territorial application of those provisions 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 Minister of State has made the following statement regarding Human Rights:

"In my view the provisions of the Heavy Commercial Vehicles in Kent (No. 1) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The role of traffic officer was established by Part 1 of the Traffic Management Act 2004. Sections 5 to 7 of that Act set out a traffic officer's existing powers and the purposes for which they may be exercised, such as preventing congestion on roads. Section 8 allows for further special powers to be conferred on traffic officers provided the appropriate national authority (in England, the Secretary of State) is satisfied that the power is necessary to facilitate a duty which may be assigned to a traffic officer. Article 2 is the first use of this enabling power.

6.2 Part 3A of the Road Traffic Offenders Act 1988 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. Offences are specified in the Road Safety (Financial Penalty Deposit) Order 2009 (No. 491) and the monetary amount of the deposit is set in the Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (No. 492). The Heavy Commercial Vehicles in Kent (No. 3) Order 2019 specifies the offence created by article 2(6) of this Order as a financial penalty deposit offence and also sets graduated fixed penalties for other offences (previously designated as financial penalty deposit offences). Article 3 of this Order specifies the deposit amount for the new offence and the graduated fixed penalties.

6.3 The other instruments in this series are the Heavy Commercial Vehicles in Kent (No. 2) Order 2019 and the Heavy Commercial Vehicles in Kent (No. 3) Order 2019, which were laid before Parliament in September.

7. Policy background

What is being done and why?

7.1 The Department for Transport has worked closely with the Kent Resilience Forum on developing traffic management plans, known as Operation Brock, to be used as a contingency in the event of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover.

7.2 Operation Brock has been designed to ensure that the M20 motorway in Kent (the primary route to the Channel Tunnel and Port of Dover) will be kept open and traffic will continue to flow in both directions. It consists of three elements: a contraflow queuing system on the M20 motorway between Junction 8 (Maidstone) and Junction 9 (Ashford); heavy goods vehicles parking at Manston Airfield; and, if necessary, temporary holding areas on the M26 motorway. The M20 contraflow provides a queuing area for cross-Channel heavy goods vehicles on the coastbound carriageway and splits the London-bound carriageway so that it can be used by all London-bound traffic and all other coastbound traffic. These measures are designed to mitigate the effects of disruption to journeys via the Channel Tunnel and Port of Dover, whatever the cause, be it severe weather, industrial action or any disruption that may occur during the United Kingdom leaving the European Union.

7.3 Operation Brock is intended as a replacement for Operation Stack during periods of severe and protracted disruption. Operation Stack involved closing junctions and carriageways on the M20 motorway to hold freight traffic in several locations. In 2015, Operation Stack was active for 31 days to address disruption at the border and parts of both carriageways of the M20 were used to store heavy goods vehicles. The unprecedented duration of this disruption and the closure of the carriageways led to considerable congestion on the roads in Kent.

7.4 This situation was exacerbated by high levels of non-compliance with the traffic management system. Almost a third of cross-Channel heavy goods vehicles avoided the queuing system on the M20 motorway and caused gridlock on local roads. This had consequential impacts on the local economy, tourism and the haulage industry. There were also costs associated with policing and managing the disruption.

7.5 The Government's priority is to avoid a repeat of this experience. As well as keeping the M20 motorway open in both directions, it is also crucial to ensure that heavy goods vehicles comply with the traffic management system to reduce the risk of significant traffic disruption on the Kent road network. Should new customs processes be introduced by the European Union when the United Kingdom leaves the European Union, ensuring that heavy goods vehicles arrive at the Channel Tunnel and Port of Dover with the correct border documentation would further reduce the risk of significant disruption at ports.

7.6 Traffic officers in England are individuals designated as such by Highways England or the Secretary of State and tasked with maintaining the flow of traffic on the strategic road network. In Kent, this has included working with the police to regulate cross-Channel traffic during periods of disruption.

7.7 This Order enables the movement of cross-Channel heavy goods vehicles in Kent to be more effectively controlled during periods of severe traffic disruption by conferring new powers on traffic officers. These powers will enable traffic officers to detect and direct vehicles that are not compliant with the traffic restrictions imposed by the Heavy Commercial Vehicles in Kent (No. 2) Order 2019 and the Heavy Commercial Vehicles in Kent (No. 3) Order 2019 ("the No. 2 and No. 3 Orders"). In particular, traffic officers will be able to require the production of documents to establish a vehicle's destination and to demonstrate readiness to export goods. Powers to direct the driver of a heavy goods vehicle in Kent to proceed to a specified motorway in Kent, or to direct such a driver not to proceed to the Channel Tunnel or Port of Dover except via a specified road or route, are also provided to traffic officers. These powers will be used to remove vehicles from the local road network and require drivers to use an approved route to continue a cross-Channel journey.

7.8 Traffic officers deployed to ensure compliance with Operation Brock will rely on their existing power to stop vehicles (conferred by section 6 of the Traffic Management Act 2004) before carrying out document checks or issuing directions. It would not be an offence for a driver to fail to produce documents if such documents were not carried, which would be a common occurrence as many vehicles leaving the United Kingdom on the 'return leg' of a journey do not carry goods. In circumstances where a driver denied carrying any documents but there was a reasonable basis for believing otherwise, roadside enforcement action for failing to comply could still take place (and the driver could contest this action through the magistrates' court if desired).

7.9 Lastly, the amount of the financial penalty deposit for failing to comply with a traffic officer exercising the new powers conferred by this Order or for breaching the traffic restrictions imposed by the No. 2 and No. 3 Orders (described below) is set at £300.

7.10 The No. 2 and No. 3 Orders complement this Order by restricting the movement of cross-Channel heavy goods vehicles on the local road network in Kent and the M20 motorway and making other provision to facilitate more effective enforcement. In particular, the No. 2 Order prohibits heavy goods vehicles leaving the United Kingdom via the Channel Tunnel at Folkestone or the Port of Dover from using local roads other than those on approved Operation Brock routes. The No. 3 Order prohibits such vehicles from accessing the coastbound carriageway of the M20 motorway between Junction 9 and Junction 13 – the primary route to the ports - unless the driver has complied with checks of border documents and is displaying a permit issued after using an approved route. The explanatory notes to the No. 2 and No. 3 Orders provide a more detailed summary.

7.11 The traffic restrictions imposed by the No. 2 and No. 3 Orders would be activated through the placing of signage (giving notice of the restrictions) on the coastbound M20 motorway between Junction 7 and Junction 8. This would be done following a decision by Kent Police's Gold Command, in consultation with the Kent Resilience Forum, to activate Operation Brock in response to congestion (or likelihood of congestion) involving cross-Channel heavy goods vehicles on the M20 motorway and/or the A20 approach to the Port of Dover.

7.12 The powers conferred on traffic officers by this Order cannot be exercised after 31st December 2020 and the traffic restrictions in the No. 2 and No. 3 Orders cannot be imposed after the same date.

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 during the United Kingdom leaving the European Union.

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 and other key stakeholders over the past several months on Operation Brock and the proposed enforcement strategy, including on checks to establish a vehicle's readiness to cross the border. A final two-week consultation on the package of measures contained within this Order and the No. 2 and No. 3 Orders was undertaken in the summer. The consultation was targeted to affected stakeholders in Kent, such as Kent County Council, the Port of Dover and Eurotunnel, and freight associations.

10.2 A good level of response was received for which the Department is grateful. Responses were broadly supportive of the proposals to provide additional powers and traffic restrictions to ensure compliance with Operation Brock and to make it possible

for access to the roads leading into the Channel Tunnel terminal at Folkestone and the Port of Dover to be made conditional on compliance with 'border readiness' checks.

10.3 Concerns were expressed as to the need to provide clarity on what being 'border ready' involves so that hauliers are not unfairly penalised. The Government will clarify this in the development of communications in preparation for the United Kingdom's departure from the European Union.

10.4 The Department has accepted concerns about the open-ended nature of the proposed legislation by providing that the substantive provisions will cease to have effect on 31st December 2020, which aligns with the duration of planning permission granted for using Manston Airfield for parking heavy goods vehicles.

10.5 Wider concerns were raised about the practical aspects of the Operation Brock system, such as the provision of welfare to hauliers, which we will take account of during any implementation of Operation Brock.

10.6 Responses also sought the extension of powers to local government enforcement officers. The Government does not believe that this extension of powers is necessary as sufficient resources will be available to enforce Operation Brock.

11. Guidance

11.1 The Department will publish guidance on the effect of this series of instruments in October 2019 on www.gov.uk.

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, 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 series of instruments, and the measures 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 An Impact Assessment has not been prepared for this instrument because there is no significant lasting impact on businesses.

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 Channel Tunnel and Port of Dover are foreign hauliers, although there are a small number of small and medium-sized businesses in the United Kingdom that undertake this activity. The impact of this legislation would be on hauliers who were attempting to circumvent the traffic management system, which would increase overall congestion on the road network and cause delays. This legislation would deter this and improve overall outcomes.

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 December 2020. In accordance with the requirements of the Small Business, Enterprise and Employment Act 2015, Chris Heaton-Harris, Minister 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 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 Barbara Franceschinis at the Department for Transport Telephone: 07585 991399 or email: Barbara.Franceschinis@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul O'Sullivan, Deputy Director for Roads, EU Exit at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Chris Heaton-Harris, Minister of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.