EXPLANATORY MEMORANDUM TO

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

2021 No. [XXXX]

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 corrects an error in one of the three instruments that implement 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 ("the 2019 Order") as amended by the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020 and the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2021 ("the First 2021 Order").

2.3 The related instruments are:

- the Heavy Commercial Vehicles in Kent (No. 1) Order 2019 as amended by the Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2020 and the Heavy Commercial Vehicles in Kent (No. 1) (Amendment) Order 2021; 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, the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2021 and the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) (No. 2) Order 2021.

2.4 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").

2.5 The legislation was first put in place in 2019 as a traffic management contingency measure in the event of severe disruption to travel via the Channel Tunnel at Folkestone and the Port of Dover in case the UK left the European Union ("EU") without a deal in place. It was updated in 2020 in preparation for the end of the EU transition period, and in 2021 in response to the COVID-19 pandemic and later to remove the sunset clauses (i.e. expiry dates) as well as other temporary provisions that were no longer required. This means that Operation Brock can now continue to be an effective response to unforeseen disruption (such as bad weather or industrial action) in the future.

2.6 The First 2021 Order sought to amend the definition of "the relevant class of road" which lists roads that a cross-Channel HCV may take to the port and inland border facilities when Operation Brock is in force, when they would be otherwise restricted to using the motorway network when the traffic management plans are deployed.

2.7 However, the amendment to the definition of "the relevant class of road" was not made correctly. This Order therefore corrects that error by deleting the relevant wording from the 2019 Order and inserting the correct definition of "the relevant class of road".

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, Robert Courts MP made the following statement regarding Human Rights:

"In my view the provisions of the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) (No. 2) Order 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 Article 3 of the 2019 Order, as amended by this Order, relies 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.

7. Policy background

What is being done and why?

7.1 The 2019 Order is being amended to correct the definition of roads accessible to HCV drivers as a result of an error in the First 2021 Order. The 2019 Order restricted 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 Short Straits, should a traffic restriction period be in force in the event of cross-Channel disruption.

7.2 Some local roads were excluded from the restriction to enable HCVs to follow the designated routes to Dover and Eurotunnel and to access the Sevington Inland Border Facility. In order to reflect changes in the operational plans that underpin Operation Brock, the First 2021 Order intended to modify the specified roads excluded from the traffic restrictions. In particular, roads leading to Manston Airfield were removed from the exclusion, meaning HCVs would no longer be able to use these roads during a traffic restriction period. Manston Airfield is no longer part of the KRF's traffic management plans since the end of the government lease on 30 June 2021. The First 2021 Order also intended to exclude the route to the Inland Border Facility at Ebbsfleet from the restriction to allow HCVs to access this facility.

7.3 The First 2021 Order sought to amend the list of excluded roads by amending the definition of "the relevant class of road" in the 2019 Order. However, the amendment

to the definition of "the relevant class of road" was not made correctly. This instrument corrects that error in order to achieve the policy intention set out above.

7.4 The Explanatory Memorandum for the First 2021 Order can be found at the below address:

https://www.legislation.gov.uk/uksi/2021/988/memorandum/contents

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 or industrial action, this could also include delays from customs checks at the international borders in Kent, for example.

9. Consolidation

9.1 There are no plans to consolidate the legislation amended by this instrument.

10. Consultation outcome

10.1 A four-week national consultation was undertaken between May-June 2021 for the First 2021 Order and the two related amending Orders. The Department worked with the KRF, the haulage industry, the relevant Short Straits ports, and other key stakeholders on retaining Operation Brock as a contingency measure in the event of disruption at the Short Straits, removing redundant border readiness provisions and removing the sunset clause from the Orders to ensure Operation Brock remains available in the long-term.

10.2 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

10.3 Given this Order corrects an error in line with the intention of the First 2021 Order, no further consultation has been undertaken.

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 across Great Britain and are running sites in the EU and on ferries ahead of the introduction of UK import controls in January 2022 and July 2022.

11.2 PDF copies of the Haulier Handbook are available at the link below. Hard copies 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.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1024203/hauliers-handbook-2-english.pdf

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 Order did 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 on small businesses is minimal because this instrument simply corrects an error so that the legislation works as intended.

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.

14.2 In accordance with the requirements of the Small Business, Enterprise and Employment Act 2015, Robert Courts 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 Lydia Austen, Deputy Director for Future EU Roads Relationship, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary Under Secretary of State at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.