EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 2) (AMENDMENT) ORDER 2020

2020 No. 1155

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 amending Order is part 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 2019 Orders from 31st December 2020 to 31st October 2021 so that HCV traffic can continue to be regulated until that point if necessary. In addition, the amending orders add new requirements for drivers of Heavy Commercial Vehicle ("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' (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. This Order modifies the roads included as approved routes that a cross-Channel HCV may take to the ports, requires a cross-Channel HCV to have a valid KAP when using the local road network in Kent, and allows an East Kent and Faversham Town Council based cross-Channel HCV driver holding a Local Haulier Permit to use local roads when they would be otherwise restricted to using the motorway network.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 enabling powers relied upon for this instrument extend to England and Wales and Scotland (see section 147 of the Road Traffic Regulation Act 1984) and the territorial application of this instrument is not limited either by the relevant Act or by the instrument.

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, Rachel Maclean MP has made the following statement regarding Human Rights:

"In my view the provisions of the Heavy Commercial Vehicles in Kent (No. 2) (Amendment) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Articles 3 and 4 of the No.2 2019 Order, as amended by this Order, rely 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. The amendments allow the No. 2 2019 Order to remain in force until 31st October 2021 and expand it to cover the need for a cross-Channel HCV driver to have a valid Kent Access Permit if using local roads.

6.2 The other instruments in this series are the Heavy Commercial Vehicles in Kent (No.1) (Amendment) Order 2020 and the Heavy Commercial Vehicles in Kent (No. 3) (Amendment) Order 2020 which amend the Heavy Commercial Vehicles in Kent (No.1) Order 2019 and the Heavy Commercial Vehicles in Kent (No. 3) Order 2019 respectively, and which have been laid before Parliament alongside this instrument.

7. Policy background

What is being done and why?

7.1 As set out in the Explanatory Memorandum to the Heavy Commercial Vehicles in Kent (No.1) (Amendment) Order 2020, at the end of the transition period there is at least initially a risk of some additional friction at the border, notably if goods arrive without having completed the necessary customs and other processes. It is thus important that the Government puts in place plans both to minimise the risk of disruption and to mitigate its impact should it occur.

7.2 The Government has worked with the Kent Resilience Forum to ensure its Kent traffic management plan, Operation Brock, is ready to manage that disruption, and introduce the Check an HGV service, on a mandatory basis for those HCVs using the Short Straits crossing from Kent to Hauts de France. The No.2 2019 Order, as amended by this Order, supports both initiatives.

7.3 The No.2 2019 Order supported Operation Brock by restricting access to the local road network for HCVs leaving Great Britain via the Channel Tunnel or the Port of Dover.

7.4 This Order enables a new restriction on driving a cross-Channel HCV on the local road network in Kent (i.e. most roads in Kent except the motorway network) without a KAP. This restriction applies at any time when the restriction on driving a cross-Channel HCV on the motorway network in Kent without a Kent Access Permit applies.

7.5 This Order also provides that the driver of a cross-Channel HCV normally kept at an operating centre in East Kent or Faversham Town Council and in possession of a valid Local Haulier Permit which bears the address of that operating centre in East Kent or Faversham Town Council is not subject to the restriction on driving on the local road network set out in article 3 of the No.2 2019 Order.

7.6 The explanatory memorandum for The No.2 2019 Order can be found online at:

- https://www.legislation.gov.uk/uksi/2019/1394/memorandum/contents

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 travel 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 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 final three-week national consultation was run between 3rd August and 23rd August. Over half the respondents agreed with the proposals, and the outcome of that consultation is summarised in section 10 of the Explanatory Memorandum to the No. 1 2020 Order. 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 will 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 on 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 before and during temporary activations of Operation Brock and the Check an HGV service will have a limited burden on industry once familiarised with it. The impact of not using the Check an HGV service would result in traffic disruption in Kent and outweigh 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 cause a 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 or 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 sized businesses without compromising the objectives of this legislation.

13.3 The impact of this legislation will be 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 will impact on cross-Channel HCV drivers who are 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 Order 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:

14.2 "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 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.