EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 2) ORDER 2019

2019 No. 1394

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 allows for the use of such vehicles to be restricted to the motorway network and other approved routes by prohibiting access to local roads in Kent.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Articles 3 and 4 of this instrument rely upon a power conferred on the Secretary of State by section 20 of the Road Traffic Regulation Act 1984. This power, which originated in section 29 of the Road and Rail Traffic Act 1933, has never been exercised (to the best of the Department's knowledge). It is being exercised now as it allows for a restriction to be imposed on roads in a wide area (unlike traffic regulation orders, which apply to named roads) and across multiple traffic authorities.

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 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.

4.2 The territorial application of this instrument is the same.

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. 2) Order 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The restrictions imposed by articles 3 and 4 of this Order rely on the power conferred on the Secretary of State by section 20 of the Road Traffic Regulation Act 1984 to prohibit or restrict the use of a class of vehicle on a class of road. That Act provides for a class of vehicle to be defined by any circumstances whatsoever and for the Secretary of State to classify roads in any manner seen fit. To the best of the Department's knowledge, this power has never been exercised.

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

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. This plan is set out in section 7 of the explanatory memorandum to the Heavy Commercial Vehicles in Kent (No. 1) Order 2019.

7.2 This Order supports Operation Brock by restricting access to the local road network. Specifically, heavy goods vehicles that are leaving the United Kingdom via the Channel Tunnel or the Port of Dover will not be permitted to use any road in Kent maintained by Highways England, Kent County Council or Medway Council other than:

- motorways, save for parts of the M20 motorway (see paragraph 7.5 below);
- the A2 and A20 between Kent's boundary with Greater London and where those roads join the motorway network in Kent;
- the A249 between the M2 and M20 motorways; and
- the A299 route from the M2 motorway to Manston Airfield.

7.3 This restriction will be activated by displaying notices on the M20 motorway between Junction 7 and Junction 8. It will not apply to vehicles:

- already on a local road or nearby premises when the restriction is activated;
- being used on the route between Manston Airfield and the Port of Dover while displaying a permit (issued to demonstrate compliance with Operation Brock);
- if the driver is acting at the direction, or with the permission, of officials or in compliance with a traffic sign;
- making local collections or deliveries of goods, provided the driver can supply information sufficient to establish this;
- during incidental and necessary tasks, such as refuelling the vehicle; or
- operated by local hauliers, provided the driver can produce a local haulier permit issued by Kent County Council.

7.4 Where the use of local roads is permitted, in order to facilitate the flow of traffic, such vehicles must remain in the nearside (left-hand) lane of specified dual carriageways so that the offside lane is reserved for other traffic.

7.5 The Heavy Commercial Vehicles in Kent (No. 3) Order 2019 complements this Order by restricting the movement of cross-Channel heavy goods vehicles on the M20 motorway between Junction 8 and Junction 13 (the primary route to the ports) and making other provision to facilitate more effective enforcement.

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 during the United Kingdom leaving the European Union.

9. Consolidation

9.1 This instrument does not amend any legislation.

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.

10.2 A final two-week consultation on the package of measures contained within this series of instruments 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. The outcome of that consultation is summarised in section 10 of the explanatory memorandum to the No. 1 Order.

11. Guidance

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