EXPLANATORY MEMORANDUM TO

THE ROAD TRAFFIC OFFENDERS (PRESCRIBED DEVICES) ORDER 2019

2019 No. 920

1. Introduction

1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Order prescribes that recordings from certain types of device may be used to provide evidence in court of certain traffic sign offences specified in the Road Traffic Act 1988, subject to further approval of the specific device by the Secretary of State. The Order permits the use of devices designed or adapted for recording by photographic or other image recording means the movement of a vehicle in a traffic lane which has been indicated as closed or unavailable by a traffic sign or on the hard shoulder of a motorway.

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 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is England and Wales.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 20 of the Road Traffic Offenders Act 1988 as amended allows a documentary record produced by a prescribed device, accompanied by an appropriately signed certificate as to the circumstances of its production, to be admitted as evidence in respect of proceedings for certain road traffic offences. Amongst the offences to which section 20 applies are certain offences contrary to the Road Traffic Act 1988 and the Road Traffic Regulation Act 1984.

6.2 Road traffic enforcement devices are of various generic types. Each generic type has to be prescribed by order before a particular device can be approved by the Secretary

of State. There has to date been no order prescribing a type for recording by photographic or other image recording means the movement of a vehicle in a traffic lane or hard shoulder which has been indicated as closed or unavailable by a traffic sign. Such prescription is necessary before any individual make of such a device can be used by the police for Red X enforcement purposes and have its evidence relied on in court.

7. Policy background

What is being done and why?

7.1 Section 20 of the Road Traffic Offenders Act 1988 aims to facilitate enforcement of certain road traffic offences by providing that evidence from particular types of enforcement device is admissible in court. There are two requirements devices must meet for this to be the case. First the generic type of device must be prescribed by the Secretary of State. Secondly, any particular example or make of a prescribed device must be of a type approved by the Secretary of State.

7.2 The Secretary of State grants type approval only to devices that have a high degree of accuracy and reliability in performance. This is assessed through rigorous testing by the Counter Terrorism and Security Division of Defence Science and Technology Laboratory (Dstl) formerly the Home Office Centre for Applied Science and Technology (CAST) and the police in the field. Testing ensures that all devices are robust, reliable in operation and can produce accurate readings or images under a variety of extreme conditions. The courts and public at large can therefore rely on the evidence they produce.

7.3 Prescription of the generic type must precede the type approval of any individual make of device. There has to date been no prescription of a type of device designed or adapted for recording by photographic or other image recording means the movement of vehicular traffic in contravention of an indication given by a light signal or on the hard shoulder of a motorway. This order is necessary to enable the Secretary of State to type approve particular makes of such a device that satisfy the testing regime.

7.4 Highways England has been working with manufacturers to modify the existing REDFLEXhadecs3 speed enforcement device to prosecute Red X and speed offences simultaneously. This has been developed primarily for the English motorway network. This device will be used to prove an offence under section 36(1) of the Road Traffic Act 1988 consisting in the failure to comply with an indication given by a light signal that vehicular traffic is not to proceed and / or an offence under section 36(1) of that Act consisting in the failure to comply with an indication given by a light signal to vehicular traffic not to enter, or proceed in, a traffic lane. It can also be used to prove an offence under section 17(4) of the Road Traffic Regulation Act 1984 consisting in a contravention of regulation 9 of the Motorways Traffic (England and Wales) Regulations 1982 (restriction on the use of hard shoulders) by the driving of a vehicle on the hard shoulder of a motorway.

7.5 The device is automatic and unattended and uses photographic evidence to record both the presence of a vehicle and procession within a prohibited lane.

7.6 The device is to be used for receding traffic only, on a carriageway that may consist of up to 4 lanes and a hard shoulder. The device may enforce up to four contiguous lanes. The device works with variable speed limits indicated by AMI (Advanced Motorway Indicator) signage above each lane or an MS4 sign at the side of the road.

7.7 One manufacturer has produced a device of this type that has met the test requirements. The Secretary of State intends to grant it type approval. This order will enable him to do so. It is expected that other devices of this type will be submitted for approval in future. This is a technical measure, to allow, within the context of long-standing policy and an existing legal framework, the type approval of devices that satisfy objective practical, scientific and technical tests. It has therefore not been the subject of public consultation.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 Not applicable

11. Guidance

11.1 Not applicable

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 Not applicable

15. Contact

15.1 James Lowes at the Home Office Police Telephone: 020 7035 8159 or email: james.lowes@homeoffice.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Williams at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rt Hon Nick Hurd MP, Minister of State for Policing and the Fire Service at the Home Office can confirm that this Explanatory Memorandum meets the required standard.