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STATUTORY INSTRUMENTS

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**2019 No. 1210**

**ROAD TRAFFIC**

**The Heavy Commercial Vehicles in Kent (No. 3) Order 2019**

*Made - - - - 3rd September 2019*

*Laid before Parliament 4th September 2019*

*Coming into force in accordance with article 1(1)*

The Secretary of State makes the following Order in exercise of the powers conferred by section 17(2)(a) and (d), (3) and (3ZB) of the Road Traffic Regulation Act 1984(1) (“the 1984 Act”) and sections 20(3), 51(3), 53(1)(a) and (2) and 90A(2)(b) of the Road Traffic Offenders Act 1988(2) (“the 1988 Act”).

The Secretary of State has consulted such representative organisations as the Secretary of State thinks fit or as appear appropriate in accordance with section 134(2) of the 1984 Act and sections 88(2) and 90E(2) of the 1988 Act.

**Citation, commencement and interpretation**

1.—(1) This Order may be cited as the Heavy Commercial Vehicles in Kent (No. 3) Order 2019 and comes into force at the same time as the Heavy Commercial Vehicles in Kent (No. 1) Order 2019(3).

(2) In this Order—

“Kent” means the geographical area comprised of the areas of Kent County Council and Medway Council;

“operating centre” has the meaning given in section 7(3) of the Goods Vehicles (Licensing of Operators) Act 1995(4) (“the 1995 Act”);

“operator’s licence” means a licence granted under section 13 of the 1995 Act(5);

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(1) 1984 c. 27; section 17(2) was amended by the New Roads and Street Works Act 1991 (c. 22), section 168(1) and Schedule 8, paragraph 28(3), the Road Traffic Act 1991 (c. 40), section 48 and Schedule 4, paragraph 25 and the Scotland Act 2012 (c. 11) (“the 2012 Act”), section 21(3). Subsections (3ZA) to (3ZD) of section 17 were inserted by the 2012 Act, section 21(4). Section 134(2) was amended by the Scotland Act 2016 (c. 11), section 44(1) and Schedule 2, paragraph 12(3).

(2) 1988 c. 53; section 20 was substituted by the Road Traffic Act 1991 (c. 40) (“the 1991 Act”), section 23. Section 53 was substituted by the 1991 Act, section 48 and Schedule 4, paragraph 102, and subsection (2) was substituted by the Road Safety Act 2006 (c. 49) (“the 2006 Act”), section 3. Sections 90A to 90F were inserted by the 2006 Act, section 11; there are amendments to section 90A but none is relevant.

(3) S.I. 2019/1388.

(4) 1995 c. 23.

(5) Section 13 was substituted by S.I. 2011/2632, regulation 8(1) and Schedule 2, paragraph 5.

“relevant vehicle” means a heavy commercial vehicle<sup>(6)</sup> authorised to use any part of the M20 Motorway by a scheme made under, or having effect as if made under, section 16 of the Highways Act 1980<sup>(7)</sup> or by a development consent order made under section 114 of the Planning Act 2008<sup>(8)</sup>—

- (a) subject to a direction given by a traffic officer under article 2(3) of the Heavy Commercial Vehicles in Kent (No. 1) Order 2019; or
- (b) on a journey to a place outside the United Kingdom—
  - (i) via the Channel Tunnel at Folkestone; or
  - (ii) which involves embarking from the Port of Dover;

“specified person” means a constable or traffic officer;

“traffic officer” means an individual designated as a traffic officer under section 2 of the Traffic Management Act 2004<sup>(9)</sup>;

“traffic restriction period” is a period of time that—

- (a) begins when traffic signs giving notice of a restriction imposed by article 2(1) are displayed on or near the coastbound carriageway of the M20 Motorway between Junction 7 (Maidstone) and Junction 8 (Maidstone (East)); and
- (b) ends when all such signs are lawfully removed or obscured.

### **Restricted access to M20 Motorway between Junctions 9 and 13**

2.—(1) During a traffic restriction period, a relevant vehicle may be used on the relevant length of carriageway only if—

- (a) the following conditions are satisfied—
  - (i) the driver has complied with any request or requirement, made during that journey by a traffic officer or a person employed by a company or body that is providing services to the Secretary of State or to Highways England Company Limited<sup>(10)</sup>, to produce border documents carried on the vehicle or by the driver; and
  - (ii) a valid cross-Channel permit is displayed in or on the vehicle while it is being used on the relevant length of carriageway and in such a position that in normal daylight the permit is easily visible from a position in front of the vehicle;
- (b) the vehicle is normally kept at an operating centre in Kent and the driver of the vehicle, when requested by a specified person, produces an operator’s licence and a valid local haulier permit, which both bear the address of that operating centre; or
- (c) the vehicle is being used on the relevant length of carriageway—
  - (i) at the direction, or with the permission, of a specified person or an examiner appointed under section 66A of the Road Traffic Act 1988<sup>(11)</sup>; or
  - (ii) in compliance with a direction displayed on a traffic sign placed on or near a road.

(2) In this article—

“border documents” means documents relating to goods that are being exported on a vehicle from the United Kingdom to any other country;

<sup>(6)</sup> See section 138 of the Road Traffic Regulation Act 1984 for the meaning of “heavy commercial vehicle”.

<sup>(7)</sup> 1980 c. 66; section 16 was amended by the Planning Act 2008 (c. 29), section 36 and Schedule 2, paragraph 24 and the Infrastructure Act 2015 (c. 7), section 1(6) and Schedule 1, paragraph 13.

<sup>(8)</sup> 2008 c. 29; section 114(1) was amended by the Localism Act 2011 (c. 20), section 128(2) and Schedule 13, paragraph 55.

<sup>(9)</sup> 2004 c. 18.

<sup>(10)</sup> Company no. 09346363. Registered Office: Bridge House, Walnut Tree Close, Guildford, Surrey, GU1 4LZ.

<sup>(11)</sup> 1988 c. 52; section 66A was inserted by the Road Traffic Act 1991 (c. 40), section 9(1), and amended by the Goods Vehicles (Licensing of Operators) Act 1995 (c. 23), section 60(1) and Schedule 7, paragraph 11.

“cross-Channel permit” and “local haulier permit” have the meaning given in article 7(1);

“the relevant length of carriageway” means the coastbound carriageway of the M20 Motorway between the last point where the exit slip road at Junction 9 (Ashford) leaves the carriageway, as indicated by the markings on the carriageway, and the end of that carriageway at Junction 13 (Folkestone).

### **Restricted access to M20 Motorway between Junctions 8 and 9**

3.—(1) Paragraph (2) applies where—

- (a) any part of the coastbound carriageway of the M20 Motorway between Junction 8 (Maidstone (East)) and Junction 9 (Ashford) is open to coastbound traffic;
- (b) a relevant provision permits such traffic to proceed on any part of the London-bound carriageway between those junctions; and
- (c) traffic signs giving notice of a restriction imposed by paragraph (2) are displayed on or near the coastbound carriageway of the M20 Motorway between Junction 7 (Maidstone) and Junction 8 (Maidstone (East)).

(2) Where this paragraph applies, a relevant vehicle proceeding in a coastbound direction must not be driven on any part of the carriageway referred to in paragraph (1)(b) unless the driver of the vehicle is acting—

- (a) at the direction, or with the permission, of a specified person; or
- (b) in compliance with a direction displayed on a traffic sign placed on or near a road.

(3) Paragraph (4) applies where—

- (a) any part of the M26 Motorway is closed, in accordance with a relevant provision, to traffic other than heavy commercial vehicles or a class of such vehicles; and
- (b) traffic signs giving notice of a restriction imposed by paragraph (4) are displayed on or near the coastbound carriageway of the M20 Motorway between Junction 7 (Maidstone) and Junction 8 (Maidstone (East)).

(4) Where this paragraph applies, a relevant vehicle proceeding in a coastbound direction on the M20 Motorway must not proceed on the coastbound carriageway of that road beyond the last point where the exit slip road at Junction 8 (Maidstone (East)) leaves that carriageway, as indicated by the markings on the carriageway, unless—

- (a) a valid M26 Motorway permit is displayed in or on the vehicle when it is proceeding through Junction 8 and in such a position that in normal daylight the permit is easily visible from a position in front of the vehicle; or
- (b) the driver of the vehicle is acting—
  - (i) at the direction, or with the permission, of a specified person; or
  - (ii) in compliance with a direction displayed on a traffic sign placed on or near a road.

(5) In this article—

“M26 Motorway permit” has the meaning given in article 7(2);

“relevant provision” means a provision in an order made under section 1, 9 or 14 of the Road Traffic Regulation Act 1984.

### **Enforcement of offences**

4.—(1) In this article, “the 1988 Act” means the Road Traffic Offenders Act 1988.

(2) In section 20(2) (speeding offences etc: admissibility of certain evidence)(12) of the 1988 Act—

(a) after paragraph (ba) insert—

“(bb) an offence under subsection (4) of section 17 of that Act consisting in a contravention of article 2(1), 3(2) or 3(4) of the Heavy Commercial Vehicles in Kent (No. 3) Order 2019 (prohibited use of the M20 Motorway in Kent by the driver of a heavy commercial vehicle);

(bc) an offence under subsection (5) of section 20 of that Act consisting in a contravention of article 3(1) or 4(1) of the Heavy Commercial Vehicles in Kent (No. 2) Order 2019 (prohibited use of local roads in Kent by the driver of a heavy commercial vehicle);”;

and

(b) after paragraph (h) insert—

“(i) an offence under article 2(6)(b) of the Heavy Commercial Vehicles in Kent (No. 1) Order 2019 (contravention of a direction given by a traffic officer).”

(3) An offence under article 2(6) of the Heavy Commercial Vehicles in Kent (No. 1) Order 2019 is a fixed penalty offence for the purposes of Part 3 of the 1988 Act.

(4) In Schedule 3 (fixed penalty offences) to the 1988 Act, at the end of the table insert—

**“Offence under the Heavy Commercial Vehicles in Kent (No. 1) Order 2019**

Article 2(6) of the Heavy Commercial Vehicles in Kent (No. 1) Order 2019	Driver of a heavy commercial vehicle in Kent failing to comply with or contravening a direction given, or requirement imposed, by a traffic officer.”
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**Amendment of the Fixed Penalty Order 2000**

5.—(1) The Fixed Penalty Order 2000(13) is amended as follows.

(2) In the table in Schedule 1 (fixed penalties), after the entry for item number 40, insert—

“40A	A fixed penalty offence under article 2(6) of the Heavy Commercial Vehicles in Kent (No. 1) Order 2019	£300”
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(3) In Schedule 2 (graduated fixed penalties), after paragraph 6 (Section 42 Road Traffic Act 1988), insert—

“7. Section 17(4) Road Traffic Regulation Act 1984

**Table 7**

(1) Nature of contravention or failure constituting the offence	(2) Amount of penalty
Contravening article 2(1), 3(2) or 3(4) of the Heavy Commercial Vehicles in Kent (No. 3) Order 2019	£300

8. Section 20(5) Road Traffic Regulation Act 1984

(12) Section 20(2) has been amended by S.I. 1997/384, 2001/1814, 2014/260 and 2017/294.

(13) S.I. 2000/2792, amended by S.I. 2009/488, 2013/1569, 2014/259, 2018/1236; there are other amending instruments but none is relevant.

**Table 8**

<i>(1) Nature of contravention or failure constituting the offence</i>	<i>(2) Amount of penalty</i>
Contravening article 3(1) or 4(1) of the Heavy Commercial Vehicles in Kent (No. 2) Order 2019	£300”

**Amendment of the Road Safety (Financial Penalty Deposit) Order 2009**

6. In the Road Safety (Financial Penalty Deposit) Order 2009(14), after Table 8 (The Trailer Registration Regulations 2018) in Part 2 (secondary legislation) of the Schedule, insert—

**“Table 9****The Heavy Commercial Vehicles in Kent (No. 1) Order 2019**

<i>Provision creating offence</i>	<i>General nature of offence</i>
Article 2(6)	Driver of a heavy commercial vehicle in Kent failing to comply with or contravening a direction given, or requirement imposed, by a traffic officer”

**Permits**

- 7.—(1) Kent County Council may issue a permit—
- (a) during a traffic restriction period to the driver of a heavy commercial vehicle in Kent that is not on the M26 Motorway (“cross-Channel permit”); or
  - (b) to the holder of an operator’s licence with an operating centre in Kent (“local haulier permit”).
- (2) Highways England Company Limited may issue a permit—
- (a) under paragraph (1)(a); or
  - (b) during a traffic restriction period to the driver of a heavy commercial vehicle on the M26 Motorway (“M26 Motorway permit”).
- (3) A permit issued under—
- (a) paragraph (1)(a) must be in writing and is valid for a period of 24 hours from the time of issue;
  - (b) paragraph (1)(b) must be in writing, specify the address of the holder’s operating centre in Kent and is valid until withdrawn by Kent County Council in writing;
  - (c) paragraph (2)(b) must be in writing and is valid for a period of 3 hours from the time of issue.

**Cessation**

8. Articles 2, 3 and 7 cease to have effect at the end of 31st December 2020.

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(14) S.I. 2009/491, amended by S.I. 2018/1236; there are other amending instruments but none is relevant.

Signed by authority of the Secretary of State for Transport

3rd September 2019

*Chris Heaton-Harris*  
Minister of State  
Department for Transport

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

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 enable the movement of cross-Channel lorries in Kent to be controlled by regulating access to the road network, conferring new powers on traffic officers to allow for such vehicles to be detected and directed, and making ancillary provision relating to enforcement.

This Order:

- (a) makes access to the coastbound carriageway of the M20 Motorway between Junctions 9 and 13 (the primary route to the Channel Tunnel at Folkestone and the Port of Dover) conditional on producing border documents (to demonstrate readiness to bring goods into a foreign country) and displaying a permit (issued after using an approved route in Kent) (article 2);
- (b) prohibits cross-Channel lorries using a contraflow on the London-bound carriageway of the M20 Motorway between Junctions 8 and 9, which is reserved for other coastbound traffic (article 3(1) and (2));
- (c) requires the drivers of cross-Channel lorries to display a permit before entering the M20 Motorway queueing area between Junctions 8 and 9 of the coastbound carriageway if the M26 Motorway is also being used as a queueing area (article 3(3) and (4));
- (d) amends the Road Traffic Offenders Act 1988 to make evidence from prescribed devices relating to breaches of the new restrictions created by this Order and the No. 2 Order, or of a direction given by a traffic officer under the No. 1 Order, more readily admissible in court through the procedure established by section 20 of that Act (article 4(2));
- (e) designates the offence created by article 2(6) of the No. 1 Order of failing to comply with a direction given, or requirement imposed, by a traffic officer as a fixed penalty and financial penalty deposit offence (article 4(3) and (4) and article 6); and
- (f) sets the fixed penalty amount for the new offence referred to immediately above and for breaches of the restrictions created by this Order and the No. 2 Order at £300 (article 5).

The restrictions imposed by articles 2 and 3, which cannot have effect after 31st December 2020, are activated through the placing of traffic signs on the coastbound carriageway of the M20 Motorway between Junctions 7 and 8. This will also activate restrictions in the No. 2 Order affecting the local road network in Kent.

This Order also provides for the issuing of permits to the drivers of heavy commercial vehicles and to hauliers established in Kent, which are required to establish some of the exceptions to the restrictions imposed by this Order and the No. 2 Order (article 7).

A full Impact Assessment has not been produced for this instrument as it is not expected to have significant impact on the private, public or voluntary sectors. An Explanatory Memorandum has been prepared for this Order and is available alongside this instrument on the UK Legislation website [www.legislation.gov.uk](http://www.legislation.gov.uk).