

EXPLANATORY MEMORANDUM TO

THE HEAVY COMMERCIAL VEHICLES IN KENT (NO. 3) ORDER 2019

2019 No. 1210

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 on the M20 motorway in Kent (the primary route to the Channel Tunnel and the Port of Dover) to be restricted and makes other provision to facilitate more effective enforcement.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 Articles 2 and 3 of this instrument rely upon the power in section 17 of the Road Traffic Regulation Act 1984 to regulate the use of special roads/motorways. The use of this power is novel – it requires the drivers of certain vehicles to comply with checks of documents relating to the export of goods and to display a permit (demonstrating compliance with the traffic management scheme known as Operation Brock, explained in the explanatory memorandum to the No. 1 Order) before proceeding beyond Junction 9 of the M20 motorway in the County of Kent. This will deter non-compliance with Operation Brock, which would cause or contribute to serious congestion on roads in Kent.

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 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. 3) Order 2019 are compatible with the Convention Rights.”

6. Legislative Context

- 6.1 Section 17 of the Road Traffic Regulation Act 1984 allows the Secretary of State to make regulations governing the use of special roads (primarily motorways). Those regulations are primarily contained in the Motorways Traffic (England and Wales) Regulations 1982 (No. 1163). Articles 2 and 3 of this Order further regulate traffic using the M20 motorway in Kent during periods of cross-Channel travel disruption. Section 105 of the Deregulation Act 2015 enables these provisions, which rely upon a power to make regulations, to be included in this Order.
- 6.2 Section 20 of the Road Traffic Offenders Act 1988 (“the 1988 Act”) provides an effective procedure for admitting evidence from prescribed devices (e.g. Automatic Number Plate Recognition cameras) during criminal proceedings. To use this procedure, the offence must be specified in section 20(2), which can be amended by order. Article 4 amends section 20(2) to allow for evidence of offences relating to Operation Brock to be admitted through this procedure.
- 6.3 Part 3 of the 1988 Act governs the fixed penalty notice regime, which allows for specified road traffic offences to be dealt with at the roadside through a fine that is payable within a set period. Part 3A of the 1988 Act allows a financial penalty deposit to be taken immediately at the roadside from a person without a UK address who is believed to have committed a specified offence.
- 6.4 Offences are designated as fixed penalty offences by amending, by order, Schedule 3 to the 1988 Act. The following secondary legislation is also relevant:
- The Fixed Penalty Order 2000 (No. 2792), which specifies the amount of the penalty;
 - The Road Safety (Financial Penalty Deposit) Order 2009 (No. 491), which specifies the offences for which a requirement to pay a deposit may be imposed; and
 - The Road Safety (Financial Penalty Deposit) (Appropriate Amount) Order 2009 (No. 492), which specifies the amount of the deposit.
- 6.5 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. 2) 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 regulating access to the M20 motorway between Junctions 8 and 13. Specifically, this Order prohibits cross-Channel heavy goods vehicles from accessing the coastbound carriageway of the M20 motorway between Junction 9 (Ashford) and Junction 13 (Folkestone) unless the driver has complied with any request to produce border documents and is displaying a permit issued after using the queuing area for cross-Channel heavy goods vehicles on the M20 motorway.

- 7.3 Border documents – those relating to goods that are being exported - will be inspected to ascertain readiness to bring goods into a foreign country. Unready vehicles would be held at foreign ports, which would cause or exacerbate congestion in Kent as the holding capacity at those ports is limited and they would quickly stop accepting additional vehicles.
- 7.4 This Order also prohibits cross-Channel heavy goods vehicles:
- using the contraflow on the London-bound carriageway between Junction 8 and Junction 9, which is reserved for other coastbound traffic when Operation Brock is deployed; or
 - joining the queueing area on the M20 motorway without a permit when a ‘feeder queue’ on the M26 motorway is in use.
- 7.5 These measures will reduce the risk of cross-Channel heavy goods vehicles attempting to circumvent Operation Brock or arriving at ports without the correct documentation for continuing their journey, mitigating potentially significant disruption at ports and on the Kent road network.
- 7.6 Lastly, this instrument facilitates more effective enforcement action against non-compliant drivers:
- evidence from prescribed devices (such as Automatic Number Plate Recognition cameras) relating to breaches of traffic restrictions or directions imposed under this series of instruments is made more readily admissible in court;
 - the offence created by the No. 1 Order of failing to comply with a direction or requirement imposed by a traffic officer is designated as a fixed penalty and financial penalty deposit offence; and
 - the amount of the fixed penalty for the relevant offences is set at £300.

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 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 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, in turn, increase overall congestion on the Kent 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.