

Requiring Proof of a Negative Covid-19 Test for HGV Drivers Travelling to France via Kent Ports

Context

On 22 December 2020, an agreement was reached between the United Kingdom (UK) and French governments to allow accompanied freight services to resume between the two countries. This followed the French Government's decision to close their border to UK traffic on 20 December. Under the terms of the agreement, which remains in place, all people travelling from the UK into France are required to show proof of a negative Covid-19 test taken within the previous 72 hours.

As a direct result of this action, the Christmas and New Year period saw significant disruption to both cross-Channel freight flows and roads in the vicinity of Channel ports. This was especially pronounced in Kent owing to the very high volumes of freight traffic using the Short Straits crossings. Operation Stack and Operation Brock were deployed to manage queues of Heavy Commercial Vehicles (HCVs) (any goods vehicle that has an operating weight exceeding 7.5 tonnes), and some traffic management measures remain in place now.

During this period, HCV drivers have been able to receive a free Covid-19 test in Kent, either in queues on the M20 or at the Government's Manston and Sevington lorry holding sites. This has been an essential emergency measure to enable the flow of freight from Great Britain into France. This approach has operated effectively but this has been assisted by low volumes of freight crossing the border during this period. Conducting testing near the border in this way is not a sustainable solution since, as traffic volumes increase, it risks causing delays and queues at the border.

Therefore, the Government has rapidly rolled out free Covid-19 testing at the Department for Transport's network of information and advice sites outside of Kent. These sites are located at motorway service areas and truck stops around the country and so are well placed to provide Covid-19 testing as well¹. The Government has also worked with

¹ An up-to-date list of information and advice sites offering Covid-19 testing can be found at <https://www.gov.uk/guidance/haulier-advice-site-locations>

hauliers and significant importers/exporters (such as supermarkets) to encourage the establishment of testing at their premises before an HCV commences its journey to France. Arrangements have also been introduced to allow hauliers that do obtain a negative test before travelling to Kent to use a 'fast track' past those queuing for tests at either the Sevington Inland Border Facility (IBF) or Manston airport.

However, despite this provision of facilities and the introduction of the 'fast track' incentive, currently, around 60% of HCVs arriving in Dover have not had a test. The requirement for a negative Covid-19 test is an open-ended requirement of the French authorities that is likely to remain in place for some time. If the current low level of testing outside Kent persists this represents a significant risk to flow across the border with the resultant transport and economic impacts on Kent and the UK, particularly given the additional friction that may result from new border processes following the end of the Transition Period.

While our hope is that increasing numbers of hauliers will make use of the information and advice sites, and establish depot testing, given the significant nature of the risk we feel that it is sensible to take reserve powers that can be used if the industry does not move to testing outside Kent in sufficient numbers.

Operation Brock

To help deal with the disruption risk posed by the potential for leaving the European Union without a deal in 2019, the Kent Resilience Forum enhanced its suite of multi-agency contingency measures designed to mitigate the impact on the Kent road network resulting from disruption at ports, known overall as Operation Fennel. These measures included Operation Brock, a new arrangement enabling cross-Channel HCVs to be queued on the coastbound carriageway between Junctions 8 and 9 of the M20 while other traffic bypassed the queue via a contraflow, and at other holding areas in Kent. Operation Brock was underpinned by the Heavy Commercial Vehicles in Kent Orders 2019.

On 1 January 2021, revised legislation (the Heavy Commercial Vehicles in Kent (Amendment) Orders 2020²) took effect, building on the 2019 Orders. In summary, these Orders specify which roads HCVs leaving the UK may use in Kent, introduce the requirement for a Kent Access Permit, enable specified persons to require the production of border documents, and give the power to fine drivers for breaches of these Orders.

Consultation proposals

The Government therefore proposes to amend the Heavy Commercial Vehicles in Kent No. 3 Order 2019³ to make it a legal requirement for an HCV driver leaving the UK via the Channel Tunnel at Folkestone or the Port of Dover driving on the M20 or M2 to be in

² The Orders can be found at the following links:

No. 1 Order: <https://www.legislation.gov.uk/ukdsi/2020/9780348214093>

No. 2 Order: <https://www.legislation.gov.uk/uksi/2020/1155/contents/made>

No. 3 Order: <https://www.legislation.gov.uk/uksi/2020/1146/made>

³ The Order can be found at <https://www.legislation.gov.uk/uksi/2019/1210/made>

possession of proof of a negative Covid-19 test result, timed at no more than 72 hours before their expected departure time from Dover or the Channel Tunnel.

The intention behind this proposal is to provide an additional incentive to HCV drivers and their employers to ensure drivers arrive in Kent with a negative test, in order to maximise the flow of goods across the Short Straits and minimise any road disruption in Kent.

HCVs travelling to France via the Short Straits are already required to have a valid Kent Access Permit (KAP) issued by the Check an HGV is Ready to Cross the Border service ('Check an HGV'). Under these proposals, the requirement for the driver to be in possession of a negative Covid-19 test result upon arrival in Kent via the M20 or M2 would be made a legal requirement, separate and in addition to the requirement to have a KAP. We will however also progress work in parallel to include a question on the requirement for a negative Covid test in those asked by the 'Check an HGV' service.

It is important to note that adding the requirement for a negative Covid-19 test result is proposed as a contingency provision. Amending the legislation in the way proposed would not automatically introduce that requirement. The intention is to have the ability to introduce that requirement quickly, with fair warning, should it be required. This is most likely to be the case if a large proportion of HCV drivers continue to arrive in Kent or at the Short Straits over the coming days without a negative Covid-19 test result. If the requirement were introduced, this would be clearly communicated to the road haulage industry, including operators based outside the UK, through targeted public communications and stakeholder engagement activity.

Enforcing the requirement for a negative Covid-19 test result in Kent

Under the existing Statutory Instruments, police and Driver and Vehicle Standards Agency (DVSA) enforcement officers are able to stop HCVs they suspect of not having a valid KAP. If upon investigation the vehicle does not have a KAP, or has a KAP that has been obtained fraudulently (such as by claiming to have border documents that the driver cannot produce when asked), the driver can be fined £300. For UK HCV drivers this fine takes the form of a Fixed Penalty Notice payable within 28 days. Foreign HCV drivers are issued with a financial penalty deposit notice payable immediately.

It is proposed that HCV drivers who do not produce, when asked, a negative Covid-19 test result should also be liable to a fine. We propose that a £150 fine would be levied against drivers who did not produce a negative Covid-19 test result.

HCV drivers travelling to destinations in Kent, and not travelling internationally, would not require a negative Covid-19 test result.

We will work with enforcement officers to ensure enforcement arrangements take account of local hauliers needing to access Kent based testing provision.

Failure of the Check an HGV service

Under the existing Statutory Instruments, there is provision to suspend the requirement for a KAP in the event that failure of the Check an HGV service means they cannot be issued.

However, it is proposed that the requirement for a negative Covid-19 test result, if activated, would remain in place in such circumstances, and enforcement action would continue to be taken against drivers on the M20 and M2 without a negative Covid-19 test result.

Local hauliers

Under the existing Statutory Instruments, HCV drivers working for hauliers based in East Kent are able to use local roads to move goods around the county without risking enforcement action. This is enabled by local haulier permits issued by Kent County Council.

However, these drivers still require a KAP if they are travelling to the Short Straits ports. The risk of unready HCVs leading to substantial delays at the border applies to all operators, regardless of where they are based. For this reason, it is proposed that the requirement for a negative Covid-19 test result also applies to East Kent HCV drivers.

Prioritisation

Under the existing Statutory Instruments, there is a contingency provision for HCVs confirmed to be carrying single loads of seafood products or day-old chicks to be prioritised through the Operation Brock system if queues build up. Prioritised vehicles must be in possession of a 'priority goods permit' issued at an agreed muster point. In order to receive a permit, the vehicle must be in possession of a valid KAP and pass certain documentary checks and physical inspections.

This approach aims to ensure that prioritised goods are border ready before they reach Dover or the Channel Tunnel. For the same reason, it is proposed that the requirement for a negative Covid-19 test result should also apply to priority goods permit holders. Note that this requirement would only apply where the contingency provision for the driver to have a negative Covid-19 test result had been activated.

This proposal sits alongside the **Expedited Return Scheme (ERS)** proposal which has been proposed by the Department for Food and Rural Affairs via a separate consultation. Please contact Defra_PoGTeam@defra.gov.uk for further information on this consultation.

This scheme would allow for the prioritisation of certain outbound vehicles moving from the UK to the EU on an exceptional basis, and would be implemented by a simultaneous amendment to the same set of regulations. The requirement for a negative Covid-19 test result would also apply to hauliers operating within the scope of this proposal.

Data gathering

Enforcement officers would keep records of how many of the drivers they stopped did and did not have a negative Covid-19 test result. For those drivers, records will be captured that contain driver details alongside confirmation that enforcement action has taken resulting from failure to produce evidence of a negative Covid-19 test. Where relevant, evidence will be retained until such time as any statutory appeals period has passed.

Question: Do you agree with these proposals to amend the Statutory Instruments that underpin Operation Brock to introduce the ability, if required, to require HCV drivers on the M20 and M2 leaving the UK via the Channel Tunnel at Folkestone or the Port of Dover to be in possession of a negative Covid-19 test result? If not, why not?

How to respond

The consultation period began on 12 January 2021 and will run until 11.59pm on 14 January 2021. Please ensure that your response reaches us before the closing date.

You may respond by emailing OperationBrockSIs@dft.gov.uk

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.