EXPLANATORY MEMORANDUM TO

THE DIRECT PAYMENTS CEILINGS REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs ("Defra") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the UK's national ceiling and net ceiling for Direct Payments for claim year 2020. These financial ceilings are used to calculate payments to farmers under the Direct Payment schemes.

2.2 The amendments to the ceilings made by this instrument take account of previous policy decisions made by the Government and Devolved Administrations, including concerning the transfer of funds for rural development measures. The amendments also take account of the findings of the Bew Review concerning the allocation of farm support funding in the UK.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made extend to the UK. The Direct Payments to Farmers (Legislative Continuity) Act 2020 (the "DPLC Act") incorporated into UK law, with UK wide extent (see section 9 of the DPLC Act), Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (EUR 2013/1307) (the "Direct Payments Regulation")). The amendments made by this instrument under Articles 6(3) and 7(3) of the Direct Payments Regulation may only be made with the consent of the Devolved Administrations. This instrument will be made with Devolved Administration consent (see Articles 6(4) and 7(4) of the Direct Payments Regulation). The territorial application is not limited either by the DPLC Act, the Direct Payments Regulation or by this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the UK.

4.2 The territorial application of this instrument is the UK.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State for Agriculture, Fisheries and Food, Victoria Prentis MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Direct Payments Ceilings Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 The Direct Payments Regulation, as far as it relates to claim year 2020, was incorporated into domestic law by the DPLC Act, and amended by the Rules for Direct Payments to Farmers (Amendment) Regulations 2020 ("SI 2020/91"), with effect from exit day (11:00pm on 31 January 2020).

6.2 Annexes 2 and 3 of the Direct Payments Regulation contain, respectively, the UK's 2020 national ceiling and net ceiling for Direct Payments. This instrument amends these ceilings to take account of the following policy decisions:

i. the decisions made by the Government and Devolved Administrations pursuant to Article 14 of the Direct Payments Regulation to make available, as additional support for measures under rural development, up to 15% of their share of the UK's national ceiling for claim year 2020; and

ii. the decisions made by the Government and Devolved Administrations pursuant to Article 7A of the Direct Payments Regulation, with regard to the recommendations of the Bew Review (see section 7.5 of this explanatory memorandum).

6.3 The net ceiling for claim year 2020 has also been amended to reflect the decisions made by the Government and Devolved Administrations concerning the reduction of payment to be granted to farmers pursuant to Article 11 of the Direct Payments Regulation.

7. Policy background

What is being done and why?

7.1 This instrument amends the UK's Direct Payments' financial ceilings (the national ceiling and the net ceiling) for claim year 2020. The national ceiling comprises, for the UK, the total value of all allocated payment entitlements, of all national reserves and regional reserves and of all the financial ceilings calculated with respect to the individual Direct Payment schemes. The net ceiling delimits the value of Direct Payments which can be made in the UK for claim year 2020. As Direct Payments are administered at a devolved level, the UK's ceilings are allocated between Defra and each Devolved Administration through administrative means.

7.2 This instrument amends the UK's national ceiling and net ceiling for claim year 2020 to reflect the following decisions made by the Government and Devolved Administrations concerning 2020 Direct Payments in their territories.

7.3 The Government, the Scottish Government and the Welsh Government decided to reduce their share of the UK's national ceiling for claim year 2020 by 12%, 9.5% and 15% respectively so these funds could be made available for rural development measures. This is the same approach as was taken in previous claim years, from 2014 to 2019, so maintains the status quo. In total, for claim year 2020, around €386.4 million has been transferred for rural development measures in this way. As was the

case in previous claim years, the Northern Ireland authorities decided not to make a transfer.

7.4 Without this transfer, the national ceiling and net ceiling for claim year 2020 set in the Direct Payments Regulation would be significantly higher than for previous claim years. It could mean that the Government and the Devolved Administrations would have insufficient funds to pay farmers, land managers and other rural businesses under their rural development programmes.

7.5 The Bew Review, concerning the allocation of farm support funding in the UK, was published in September 2019 along with the Government's response, both of which are available here: https://www.gov.uk/government/publications/domestic-farm-support-funding-bew-review-government-response. The amendments that this instrument makes to the national ceiling and net ceiling reflect the findings of the Bew Review and the subsequent funding decisions made by the Scottish Government and Welsh Government. In line with the recommendations of the Bew Review, the Government agreed that Scottish farmers will receive an additional €60.43 million and Welsh farmers an additional €6.11 million over a two-year period, 2020-22. The Welsh Government has decided to use the additional funds allocated to them for 2020-21 for their 2020 Direct Payment schemes. It was therefore decided to increase the UK's national ceiling and net ceiling for claim year 2020 by €3.055 million to account for this.

7.6 The net ceiling has also been amended to take account of the decisions made by the Government and Devolved Administrations on the level of reductions to be applied to farmers' payments under the 2020 Basic Payment Scheme. The Direct Payments Regulation requires reductions of at least 5% to be applied to payment amounts above €150,000. The net ceiling must be reduced to take account of the estimated value of such reductions and these amounts are then made available for rural development measures.

7.7 The Government and Devolved Administrations have each decided to maintain the same level of reductions as in previous claim years. This means that in England a reduction of 5% will be applied to Basic Payment Scheme payment amounts above €150,000. In Scotland a reduction of 5% will be applied to payment amounts above €150,000 and up to €600,000, and a 100% reduction applied to amounts over €600,000. In Wales a reduction of 15% will be applied to payment amounts above €150,000 and up to €200,000, 30% to amounts above €200,000 and up to €250,000, 55% to amounts above €250,000 and up to €300,000 and a 100% reduction to amounts over €300,000. In Northern Ireland a reduction of 100% will be applied to payment amounts above €150,000. The UK's net ceiling for claim year 2020 has been reduced by around €3.9 million to account for the estimated value of these reductions.

7.8 Taking the policy decisions described in sections 7.3 to 7.7 of this explanatory memorandum into account, the UK's national ceiling for claim year 2020, as amended by this instrument, is €3.055 million higher than it was for claim year 2019. The UK's net ceiling for claim year 2020 is €3 million higher than it was for claim year 2019. These increases result from the additional funds for Wales arising from the Bew Review. The allocations for Wales have therefore been increased to reflect this. There is no material difference, compared with the 2019 claim year, to the allocations for England, Northern Ireland and Scotland.

8. European Union (Withdrawal) Act 2018 /Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018. However, the need for the instrument arises from the withdrawal of the UK from the European Union. Had the UK not left the EU, the necessary adjustments to the UK's financial ceilings to take account of the transfer of funds to be used for rural development would have been made by the European Commission. It would not have been possible to increase the UK's ceilings to take account of the Bew Review.

9. Consolidation

9.1 Defra does not intend to consolidate the relevant legislation at this time.

10. Consultation outcome

10.1 This instrument has not been subject to a formal consultation. This is because it amends the national ceiling and net ceiling to take account of previous decisions and largely maintains the status quo. The independent Bew Review (see section 7.5 of this explanatory memorandum) consulted with a wide range of parties, including agricultural economists, industry stakeholders and the Devolved Administrations.

10.2 This instrument has been developed in collaboration with officials in the Scottish and Welsh Governments and the Department of Agriculture, Environment and Rural Affairs ("DAERA") in Northern Ireland.

11. Guidance

11.1 Defra is not producing any guidance on this instrument as it does not introduce policy change.

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 because it does not introduce policy change and largely maintains the status quo.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision to take no action to assist small businesses is that no disproportionate impacts are expected to affect small and micro businesses.

14. Monitoring & review

14.1 Defra and its agencies will monitor and review the impact of this instrument as part of its standard policy-making procedures, and will ensure that the provisions are adhered to.

15. Contact

15.1 Claire Williams at Defra: 0208 0262927 or email: claire.williams@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Andrew Robinson, Deputy Director for CAP, Direct Payments and Sector Interventions at Defra, can confirm that this explanatory memorandum meets the required standard.

15.3 Victoria Prentis, the Parliamentary Under Secretary of State for Agriculture, Fisheries and Food at Defra can confirm that this explanatory memorandum meets the required standard.