EXPLANATORY MEMORANDUM TO

THE ENVIRONMENTAL PROTECTION (PLASTIC STRAWS, COTTON BUDS AND STIRRERS) (ENGLAND) 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.

1.2 This explanatory memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument is being made to restrict the supply of single-use plastic straws, single-use plastic-stemmed cotton buds, and plastic drink stirrers, in order to prevent pollution of the environment or harm to the health of humans and animals.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Clause 1(2) of the draft instrument provides that most of its provisions come into force on the day after the instrument is made. In the Government's view this does not infringe the principle that new legislation which imposes duties on people that are significantly more onerous than before, and requires them to adopt different patterns of behaviour, should not be brought into force on a date earlier than gives those affected reasonable chance to adapt to the changes required.

3.2 This is because:

- As explained more fully in paragraphs 10.1 to 10.5 of this explanatory memorandum, a policy consultation was held from October to December 2018, and the Government published its response on 22nd May 2019. The response stated the Government's intention to bring a ban on plastic straws, plastic-stemmed cotton buds and plastic drink stirrers into force in April 2020. This announcement was widely publicised in the national press, and Defra considers it reasonable to assume that businesses are aware of the Government's intention to bring this change into force in April 2020.
- As described in paragraph 10.6, a draft of this instrument was published online in October 2019. The draft instrument has not changed from that version in respects that make it more onerous, or that alter the ways in which businesses need to adapt. The main changes made, other than minor changes to enforcement provisions and minor drafting changes, have been to add or widen exemptions.
- In light of the Government's clear statement of its intention to legislate, it does not expect that businesses will wait until after the instrument has been made before taking steps to source products made of alternative materials, should they wish to continue to supply such products. Defra envisages that many businesses

are either already taking such action, or will do so following the publication of the draft instrument after it is laid in draft.

- As explained in paragraph 13.2, regulation 15 of the draft instrument makes transitional provision to minimise the impact of the instrument on businesses, by allowing them to continue until 31st October 2020 to supply products obtained on or before 30th April 2020.
- Defra intends to publish guidance for affected businesses a reasonable period (i.e. not less than 21 days) in advance of the instrument coming into force. The guidance will, among other things:
  - state that Defra proposes to make this instrument on 29th April 2020 so that it will come into force on 30th April 2020, subject to consideration of any comments which may be received as a result of the notifications referred to in paragraphs 7.9 and 7.10, and to Parliamentary approval of the draft instrument being obtained before that date; and
  - explain the effect of the transitional exemption in regulation 15.

3.3 Taking all these matters into account the Government considers the commencement provision to be appropriate, having regard also to the public interest in the restrictions in the draft instrument coming into force without delay.

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)

3.4 This instrument applies to England only.

3.5 This instrument does not have any minor or consequential effects outside England.

3.6 In the view of Defra, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this entire instrument would be within:

- the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter;
- the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; and
- the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.7 Defra has reached this view because it considers that the primary purpose of this instrument relates to the protection of the environment, which is within the devolved legislative competence of the three Devolved Administrations. The primary purpose of this instrument is not within Schedule 5 to the Scotland Act 1998 (c. 46), Schedules 2 or 3 to the Northern Ireland Act 1998 (c. 47) or Schedule 7A to the Government of Wales Act 2006 (c. 32), and is not otherwise outside the legislative competence of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "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)".

5. European Convention on Human Rights

5.1 The Rt Hon George Eustice MP, Secretary of State for Environment, Food and Rural Affairs, has made the following statement regarding Human Rights:

"In my view the provisions of the Environmental Protection (Plastic Straws, Cotton Buds and Stirrers) (England) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument is made principally under section 140 of the Environmental Protection Act 1990 ("the 1990 Act"). Insofar as it includes provision for civil sanctions, this instrument is made under section 62 of the Regulatory Enforcement and Sanctions Act 2008 ("the 2008 Act"). Section 140 of the 1990 Act is specified in Schedule 7 to the 2008 Act for the purposes of section 62.

6.2 This instrument would, but for the inclusion of provision for civil sanctions, be subject to negative resolution pursuant to section 161 of the 1990 Act. In consequence of the inclusion of civil sanctions, it is subject to affirmative resolution in compliance with section 62(3) of the 2008 Act.

6.3 Defra has previously implemented a ban on rinse-off personal care products containing microbeads, under the same powers: the Environmental Protection (Microbeads) (England) Regulations 2017 (S.I. 2017/1312) ("the Microbeads Regulations"). The Scottish Government has implemented a ban on supply of plastic-stemmed cotton buds in Scotland: the Environmental Protection (Cotton Buds) (Scotland) Regulations 2019 (S.S.I. 2019 No. 271) ("the Scottish Cotton Buds Regulations").

6.4 Restrictions on the supply of single-use plastic items, including those to which this intrument applies, are also to be implemented by EU Member States from 2021, under Directive (EU) 2019/904 ("the Single-Use Plastics Directive").

7. Policy background

What is being done and why?

7.1 Single-use plastics, including plastic-stemmed cotton buds, plastic drinking straws and plastic drinks stirrers, can have negative effects on the environment if they are littered or discarded incorrectly after their use. Not only do they damage terrestrial and marine life, there are costs associated with their clean-up and externality costs imposed on the tourism and fishing industries when they are disposed of incorrectly.

7.2 It is the Government's ambition to leave the environment in a better state for the next generation. The Government's 25 Year Environment Plan, published in January 2018, outlines the steps that will be undertaken to achieve that ambition, including new measures to eliminate all avoidable plastic waste.

7.3 In April 2018, a proposed ban was announced on the distribution and/or sale of plastic straws, plastic drinks stirrers and plastic-stemmed cotton buds in England (subject to consultation). This consultation was launched on 22 October 2018 and closed on 3

December 2018. On 22nd May 2019, the summary of responses and the Government response were published. The government response confirmed that restrictions on the supply of plastic straws, plastic-stemmed cotton buds, and drinks stirrers would be implemented in April 2020, with some exemptions.

7.4 This instrument restricts the supply of single use plastic drinking straws and plastic-stemmed cotton buds to the end user in England, with some exemptions. This will allow for the movement of these items through the supply chain from business to business, but restrict the final supply of these items to individuals unless one or more of the given exemption criteria is met.

7.5 These exemptions stem from extensive engagement with relevant stakeholders and responses to the consultation. From these responses, it became clear that plastic straws are essential for people with disabilities or accessibility needs. The exemptions will ensure that plastic straws will continue to be available for use as medical devices and for people with disabilities who rely on them to eat and drink safely and independently. Therefore, plastic straws will continue to be available as medical devices. They will also still be able to be supplied through registered pharmacies (in store and online) and in catering establishments on demand only. Some other establishments, such as care homes, prisons, and educational establishments, will also be able to provide plastic straws for the same purpose.

7.6 The supply of plastic-stemmed cotton buds will be exempt for medical, scientific, and forensic purposes due to the importance of the use of plastic in ensuring the item provides the requisite strength, stiffness, hygiene, and reduced contamination risk.

7.7 This instrument also includes a prohibition on the supply of plastic drinks stirrers, to which there are no exemptions.

7.8 The intention of the restrictions is to help protect the environment for future generations, improve the quality of the environment, and reduce harm to human health and marine life. This instrument will ensure that drinking straws, stirrers and cotton buds sold in England are made of more environmentally friendly materials as well as promote the use of reusable alternatives. The restrictions also intend to increase consumer and business awareness of the environmental harms which single-use plastics can cause when they are incorrectly disposed of. The exemptions will ensure that those who rely on using plastic straws suffer no welfare costs following the restrictions.

7.9 On 16th January 2020 the draft instrument was notified to the European Union under the Technical Standards and Regulations Directive ("TSRD") as well as to the World Trade Organisation under the Technical Barriers to Trade Agreement ("TBTA"). The TSRD continues to apply to the United Kingdom during the Transition Period following EU Exit. It requires legislation which affects or may affect trade in the EU to be notified to the EU at least three months before being made, and consideration to be given to any representations made by the European Commission or Member States during that period. Although the instrument cannot be made during this period, Defra considers it appropriate to lay it in draft within the period in order to avoid any delay in implementation, taking into account the strong level of public concern about pollution from single-use plastic items.

7.10 The government attaches importance to the need to avoid wasting Parliamentary time, which would arise if any representations arising from the notification process were to necessitate the withdrawal of the instrument. Defra believes that such a situation is

unlikely to arise in relation to this draft instrument, since the Single-Use Plastics Directive requires all EU Member States to implement bans from 2021 on the products to which the instrument relates. Additionally, both SIs referred to in paragraph 6.3 were notified under the TSRD and the Microbeads Regulations were notified under the TBTA, and no responses were received to those notifications, except for the European Commission asking the Scottish Government to delay implementation of the Scottish Cotton Buds Regulations until after the adoption of the Single-Use Plastics Directive (which has now taken place).

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

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 None.

10. Consultation outcome

10.1 Proposals for the restrictions were drawn up following engagement with key stakeholders including: disability groups, non-governmental organisations, and relevant industry experts. A public consultation entitled "*Consultation on proposals to ban the distribution and/or sale of plastic straws, plastic-stemmed cotton buds and plastic drink stirrers in England*" was held between 22 October 2018 and 3 December 2018. It was also publicised in the London Gazette.

10.2 The consultation set out proposals to ban the distribution and/or sale of plastic straws, plastic-stemmed cotton buds, and plastic drink stirrers in England. It explained that this instrument is seeking to address the impact of these single-use or 'on-the-go' plastic items, but also provides for a number of exemptions that were considered on accessibility, scientific, and forensic grounds. It set out timescales for the introduction of this instrument in England and that the Devolved Administrations would be seeking separate consultations if they similarly wished to take action on these single use plastics.

10.3 The consultation asked for comments on the proposals including: specific questions on scope; potential exemptions; timescales; compliance monitoring and enforcement; costs to industry; and environmental risks of alternatives to these items.

10.4 In total, the consultation received 1602 responses from a wide range of stakeholders, including 1213 from the general public. The majority of both individuals (82%) and organisations (81%) supported the proposals to introduce regulations for plastic straws. Similarly, the majority of respondents supported the proposals to introduce regulations for plastic drink stirrers (89% of all respondents) and plastic-stemmed cotton buds (90% of all respondents). In additional to the overarching proposals, the consultation sought views on the detailed criteria for exemptions to any restrictions. The majority of respondents (65%) agreed with the Government's proposal to exempt plastic straws for medical-enabling and other specialist uses from any restrictions. This instrument therefore includes relatively broad exemptions, to ensure that those who require plastic straws can continue to access them. It is the Government's view that even with these exemptions the environmental benefits of the instrument will still

be very high overall, due to the expected reduction in the use of the single-use plastic items to which the instrument relates.

10.5 A copy of the full government response is available from https://www.gov.uk/government/consultations/single-use-plastic-banning-the-distribution-andor-sale-of-plastic-straws-stirrers-and-plastic-stemmed-cotton-buds-in-england.

10.6 In accordance with section 140(6) of the Environmental Protection Act 1990, on 28 October 2019 Defra published a notice in the London Gazette which provided access to a draft of the regulations and sought public representations. This opportunity was additionally publicised via a web link on gov.uk and by email to Defra's network of relevant stakeholders. The period of comment was two weeks: the statutory requirement. Responses were received from a small number of organisations representing local government and industry. The main issues raised related to enforcement of and exemptions to the restrictions.

10.7 In response, references to regulation were refined to ensure the restrictions can be properly enforced. A provision was added to allow businesses to continue to supply products obtained before this instrument comes into force for a short period of time afterwards. An exemption was added for plastic straws attached to drinks products, to ensure that they can continue to be supplied where doing so fulfils a medical purpose.

11. Guidance

11.1 This intrument will be enforced by local authorities (and their trading standards officers) in accordance with future published guidance. The guidance will be published in April 2020 by local authorities. The guidance will assist manufacturers, suppliers, retailers and the public in understanding the enforcement and sanctions regime. Defra intends to raise awareness of the new legislation by meeting representatives and providing extensive explanation to local authorities on what is included in the restrictions and the exemptions.

12. Impact

12.1 There is no anticipated impact from this instrument on charities or voluntary bodies. The impact on businesses is due to the higher price of alternative paper straws and wholesalers and hospitality-based businesses are likely to be those that are most affected by the increase in straw prices in England. It is expected that retailers will pass the majority of costs onto consumers in the prices charged for paper straws. Similarly, hospitality businesses that provide straws free of charge alongside purchase of a drink are expected to pass through some of the costs to consumers. Consumers expected to absorb the majority (60%) of the additional costs via higher prices. We assume businesses that switch voluntarily are doing so regardless of whether plastic straws are banned, and therefore any costs incurred to these businesses from switching are not counted as an impact of the restrictions. Therefore the restrictions generate £54m in net present costs, discounted over ten years.

12.2 The impact on the public sector constitutes minimal additional regulatory burden with respect to inspection and enforcement of the restrictions as outlined in this instrument. A small amount of additional burden is anticipated in the form of additional time for trading standards officers and administration of sanctions where appropriate. The best estimate for the cost of administrating this instrument is an overall net present cost of

£732,921. Due to previous voluntary actions from industry, rates of non-compliance are expected to be low.

12.3 A full Impact Assessment is submitted with this Explanatory Memorandum and published alongside the memorandum on the legislation.gov.uk website. The impact has been verified in light of consultation responses and this is reflected in the Impact Assessment.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), there is a lead-in time exceeding 10 months since the announcement of the proposed restrictions in the Government's response to consultation. Additionally, regulation 15 makes transitional provision allowing for the continued supply of existing stock; until 31st October 2020 it will not be an offence for a person to supply or offer to supply a product which they obtained on or before 30th April 2020.

13.3 This will allow businesses to continue to supply products obtained on or before the 30th April 2020 until the 31st October 2020, which will reduce the costs associated with supplying products made from alternative materials.

14. Monitoring & review

14.1 This instrument will be subject to regular review. The obligations are set out in regulation 24 and include (i) a review of the operation of the provisions in Part 6 (Enforcement and Civil Sanctions) and the Schedule within 3 years from the date on which this instrument comes into force, as required by section 67 of the Regulatory Enforcement and Sanctions Act 2008; and (ii) a review of the regulatory provision (including Part 6 and the Schedule) at least every 5 years from the date this instrument comes into force, as required by the Small Business, Enterprise and Employment Act 2015. The conclusions of such reviews are to be published.

15. Contact

15.1 Tom Pye at the Department for Environment, Food and Rural Affairs, Telephone: 0208 415 2555 or email: tom.pye@defra.gov.uk, can be contacted with any queries regarding this instrument.

15.2 Chris Preston, Deputy Director for Resources and Waste at the Department for Environment, Food and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.

15.3 Rebecca Pow MP, Parliamentary Under Secretary of State at the Department for Environment, Food and Rural Affairs, can confirm that this explanatory memorandum meets the required standard.