EXPLANATORY MEMORANDUM TO

THE WORLD TRADE ORGANISATION AGREEMENT ON AGRICULTURE (DOMESTIC SUPPORT) 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 is made under Part 6 of the Agriculture Act 2020 to ensure continued compliance by the United Kingdom with its obligations under the World Trade Organisation ("WTO") Agreement on Agriculture ("AoA") in relation to classification and notification of domestic support, and its commitment to reduce its Aggregate Measurement of Support ("AMS"). This instrument specifies the amounts of "amber box" payments that may be given in each country of the United Kingdom. "Amber box" payments are those with trade-distorting effects, which are limited under the AoA. This instrument also outlines the procedure for classifying such schemes, and permits the Secretary of State to request information where this is needed to enable the United Kingdom to satisfy its obligations under the AoA.

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 cover the United Kingdom (see Agriculture Act Part 6) and the territorial application of this instrument is not limited either by the Act or by this instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 The Minister Prentis has made the following statement regarding Human Rights:

"In my view the provisions of the World Trade Organisation Agreement on Agriculture (Domestic Support) Regulations 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument allows for each UK administration to design and implement their own agricultural support schemes within an amber box spending envelope. Accordingly, regulation 4(2) sets a limit on the amount of amber box support that can be given in each part of the UK. These limits have been calculated based on the total level of WTO notifiable domestic support given in each part of the UK (yearly average for 2014-2017) and converted to a percentage of the UK AMS commitment as set out in Part IV of the UK Goods Schedule. The limits are designed to safeguard compliance with the overall UK AMS commitment and ensure that policy choices are not constrained, assuming that overall levels of domestic support do not increase from their current levels.

6.2 The amounts set out in regulation 4(2) are limits on amber box spending in each part of the UK not including any spending from 'the reserve'. The reserve is the difference between the sum of the amounts set out in regulation 4(2) and the total amount of amber box support allowable to the UK under the AoA. It is expected that the reserve will cover amber box crisis measures, and other specific purposes as set out in regulation 4(3).

6.3 The AMS reserve also includes support that meets the requirements of Article 6(4) of the AoA (*de minimis* amber box support), which for practical purposes can only be determined retrospectively as it is based on the value of production. *De minimis* amber box support is defined in the AoA as product-specific amber box domestic support not exceeding 5 per cent of the total UK value of production of a basic agricultural product, plus non-product-specific amber box domestic support not exceeding 5 per cent of the value of the total UK agricultural production. *De minimis* will not therefore be taken into account when setting spending budgets, but it will be taken into account in the calculation of AMS for the purposes of WTO notifications.

6.4 It is important that schemes are classified correctly across the UK, and that there is a robust process for dealing with any disagreement within the UK. This instrument therefore sets out a process for agreeing the classification of new or amended domestic support schemes. Under regulation 5, when an administration intends to introduce a new or amended scheme, they must give notice to the other administrations. A 'fast track' process will be used for amended schemes which do not change the scheme classification.

6.5 Regulation 5 sets out the process for a proposing authority to notify a new or amended support scheme. Under regulation 5(6), the proposing administration is required to propose a classification for the scheme (green, blue or amber box) and provide evidence in support of the classification. Under regulation 5(9), where a new or amended scheme replaces a scheme which had previously been given a classification in the UK ("'like-for-like' schemes"), the proposal may be accompanied by a list of changes to the scheme rather than full classification evidence.

6.6 Regulation 6 sets out the process for determining the classification of a scheme and includes a process for challenging the proposed classification of a new or amended domestic support scheme.

6.7 Under regulation 7, new or amended schemes cannot be adopted if they would lead to a breach of an administration's amber box ceiling as set out in section 4(2).

6.8 In order to comply with WTO obligations, the UK Government is required to notify to the WTO use of domestic support on an annual basis. Regulation 8 sets out the

information that is required from administrations to allow the UK Government to meet these obligations.

6.9 Regulation 9 makes provision for the Secretary of State to request further information from administrations in relation to notifications required under the AoA, or in relation to disputes with other signatories to that Agreement.

7. Policy background

What is being done and why?

7.1 The purpose of this instrument is to ensure continued compliance by the United Kingdom with its obligations under the WTO AoA.

7.2 The United Kingdom is a founding member of the WTO, but whilst a member of the European Union (EU) its interests at the WTO were represented by the European Commission, and the Commission was responsible for ensuring that the UK complied with the WTO agreements.

7.3 The Regulations of the EU's Common Agricultural Policy ("CAP") set the framework within which the UK provided agricultural support and served to ensure compliance with the AMS commitment and other obligations under the AoA. The UK was required to report to the Commission on its application of the CAP instruments, and the Commission then notified the resultant levels of farm support to the WTO Secretariat, as part of a coordinated return for all Member States combined.

7.4 Following the UK's withdrawal from the EU the UK will now represent its own interests at the WTO, and the UK Government will be responsible for ensuring that the UK complies with its obligations and commitments as an independent WTO member.

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 but relates to the withdrawal of the United Kingdom from the European Union because following the UK's withdrawal from the European Union the United Kingdom will now represent its own interests at the World Trade Organisation (WTO), and the UK Government will be responsible for ensuring that the UK complies with its obligations and commitments as an independent WTO member. Previously the Regulations of the EU's CAP set the framework within which the UK provided agricultural support and served to ensure compliance with the AMS commitment and other obligations under the AoA.

9. Consolidation

9.1 These regulations do not amend another instrument.

10. Consultation outcome

10.1 These regulations were drafted in consultation with policy officials from the devolved administrations, who were given the opportunity to comment at each drafting stage. It was possible to accommodate the majority of their comments and suggested changes whilst recognising that UK Government's position is that ensuring compliance with international obligations remains a reserved issue.

11. Guidance

11.1 No further guidance or publicity will be produced.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 The impact on the public sector is limited to the requirements placed on administrations in implementing domestic agricultural support schemes in order to ensure that the UK continues to meet WTO obligations under the AoA.

12.3 An Impact Assessment has not been prepared for this instrument because it does not directly affect businesses.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is by continued UK adherence to WTO obligations under the AoA. This will be reviewed within Defra on an ongoing basis and where further action is necessary to ensure WTO compliance, the legislation may be amended accordingly.

14.2 This instrument does not include a statutory review clause.

15. Contact

15.1 Ben Reed at Defra, Telephone: 0208 7201288 or email: ben.reed@defra.gov.uk can be contacted with any queries regarding this instrument.

15.2 Sinjini Mukherjee, Deputy Director WTO, Trade operability and implementation team, EU and International Trade Directorate, at Defra can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Prentis at Defra can confirm that this Explanatory Memorandum meets the required standard.