EXPLANATORY MEMORANDUM TO

THE AGENCY WORKERS (AMENDMENT) REGULATIONS 2011

2011 No. 1941

1. This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 The instrument corrects drafting errors in the Agency Workers Regulations 2010 (SI 2010/93) ("AWR").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument corrects errors in the AWR including those referred to by the Joint Committee on Statutory Instruments, Tenth Report of Session 2009-10

4. Legislative Context

4.1 The AWR were made on 20th January 2010 and come into force on 1st October 2011. They implement Council Directive 2008/104/EC on temporary agency work (OJ L 327, 5.12.2008, p.9). The AWR provide certain rights for temporary agency workers including in relation to basic working and employment conditions

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 Edward Davey made the following statement regarding Human Rights:

In my view the provisions of the Agency Workers (Amendment) Regulations 2011 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The Explanatory Memorandum for the original regulations is attached as Annex A. The original Memorandum explains the policy background for regulating agency workers.

7.2 These Regulations correct drafting errors in the AWR. The amendments not change the policy intention of the AWR.

The amendment to regulation 3 AWR has been made to avoid any unintended narrow construction of part of the wording for the definition of 'agency worker'. The amendment to regulation 10(1)(c) ensures that the requirements under that paragraph are triggered only after the agency worker has come to the end of the first assignment.

The amendments to paragraphs (1) and (2) of regulation 14 ensure that paragraph (1) and not paragraph (2) is expressed to be subject to paragraph (3). The amendment to paragraphs (3) and (4) correct the situation under the original wording under which the general deeming provision in regulation 5(3) is relied on as a defence to liability by the temporary work agency under regulation 14.

The amendment to paragraph 16 of the Schedule corrects a numbering error.

- Consolidation

7.3 This instrument does not consolidate any other instruments.

8. Consultation outcome

8.1 No consultation has been carried out on this instrument since its impact is only to correct drafting errors. The Explanatory Memorandum for the original regulations detail the consultations which took place on the policy.

9. Guidance

9.1 Guidance can be found on the Department for Business Innovation and Skills website:

http://www.bis.gov.uk/policies/employment-matters/strategies/awd

10. Impact

10.1 The impact on business, public sector, charities or voluntary bodies for the policy is set out in the Impact Assessment which accompanied the original regulations.

10.2 The Impact Assessment provided for the original regulations is available from www.legislation.gov.uk . No assessment has been carried out for this instrument since it only corrects drafting errors.

11. Regulating small business

11.1 The legislation applies to small business. The Explanatory Memorandum for the original regulations sets out the steps taken to minimise the impact on small business.

12. Monitoring & review

12.1 The review period is outlined in the original Explanatory Memorandum.

13. Contact

13.1 Robert Porteous at the Department for Business, Innovation and Skills. 020 7215 5000.