EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT RIGHTS ACT 1996 (ITEMISED PAY STATEMENT) (AMENDMENT) (No. 2) ORDER 2018

2018 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 extends the right to receive an itemised pay statement (or "payslip") to all workers, and not just 'employees'. This provision will assist such workers in determining whether they have been paid correctly. This corrects the current situation whereby those at work classified as 'employees' have a statutory entitlement to receive a payslip, while those classified as 'workers' who are not employees do not. The aim is to increase transparency between employer and worker. In turn, by giving all workers this right, we expect a higher number of workers to be paid correctly.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 The territorial application of this instrument includes Scotland.

4. Legislative Context

4.1 This Order is made under section 23 of the Employment Relations Act 1999 ("the 1999 Act"), which allows the Secretary of State to confer rights under, among other legislation, the Employment Rights Act 1996 ("the 1996 Act") on specified classes of individuals. This Order confers the right to receive a payslip upon those workers not currently entitled under section 8 of the 1996 Act and extends the corresponding enforcement provisions. The power under section 23 of the 1999 Act has not previously been exercised.

4.2 At present, a payslip must include information on an employee's gross amount of wages or salary, deductions from that gross amount, and the net amount of wages or salary received. This Order will be laid simultaneously alongside the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018, which will require employers to also include the number of hours employees are being paid for on their payslips, where pay varies by reference to time worked. Both Orders are intended to come into force at the same time in April 2019. The two Orders implement different aspects of the same policy and, consequently, all time-paid workers will also be entitled to receive the number of hours they are being paid for in

their payslips. However, the Orders are not inter-conditional and one Order can come into force even if the other one does not.

5. Extent and Territorial Application

5.1 The extent of this instrument is England, Wales and Scotland.

5.2 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

6.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding human rights:

"In my view the provisions of the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018 are compatible with the Convention rights."

7. Policy background

7.1 We estimate 290,000 workers currently do not receive a payslip and will now have a statutory right to receive one if this Order comes into force.

7.2 By providing workers with greater transparency over how much they are being paid, the Order will help workers ensure they are being paid correctly and thus contribute to the Government's objectives to reduce the rate of underpayment.

7.3 The Order will support the recommendations made by the report on 'Good work: the Taylor review of modern working practices'. The review was submitted to the Government in July 2017 and contains a series of recommendations for improving employee and worker rights in UK labour law. The Order supports recommendations made concerning increasing transparency over employment rights to help ensure their enforcement. The Order is also part of a broader range of measures the Government has already adopted to strengthen NMW / NLW (National Minimum Wage / National Living Wage) enforcement, such as heightening penalties for non-compliance and increasing the budget allocated to enforcement.

8. Consultation outcome

8.1 An informal consultation was undertaken over 2017 with a range of stakeholders aimed at assessing the impact of different policy options for improving the provision and quality of payslips. Those consulted were the main representative bodies of private sector employers (both large and small); employers from the different parts of the public sector; the main trade unions who represent a large number of workers; representatives of in-house HR and payroll services; and third party payroll and software providers. Surveys were also undertaken to consult a large number of stakeholders on the different policy options under consideration. These included two surveys which covered employers, HR/ payroll staff and third party payroll providers. Another survey was carried out with workers / employees.

8.2 In summary, we found that employer representatives were generally content to provide a payslip to all 'workers' as well as 'employees'; many employers who utilised both employees and workers said they did not differentiate between the two in the provision of payslips.

8.3 Trade unions supported the proposal and thought it would boost transparency and empower workers to challenge their employer if they thought they were underpaid.

9. Guidance

9.1 Employers, employees and workers will be made aware of the requirements of the regulations through provision of guidance on the GOV.UK website. The Government will also engage with employers and payroll providers directly, and with ACAS in preparation for workers contacting the organisation.

10. Impact

10.1 The Order will affect employers who were not providing a payslip to workers and will now have to. We estimate 290,000 workers (or 1% of the workforce) do not receive a payslip and will benefit once this Order comes into force.

10.2 The total one-off implementation cost for providing a payslip to all workers is estimated at £0.9 million and the ongoing costs are estimated at £24.4 million per annum. We expect these costs to fall upon private sector employers.

10.3 An Impact Assessment is submitted with this Explanatory Memorandum and published alongside it on the legislation.gov.uk website.

11. Regulating small business

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

11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken includes, but is not limited to:

- Consulting representatives of small businesses on developing the policy so the needs of small businesses are accounted for (please see the 'Small and Micro Business Assessment' on page 20 of the Impact Assessment for further details);
- Bringing the Order into force in April 2019 so that firms have time to adapt their internal systems / processes to meet the legislation's requirements;
- Including guidance on GOV.UK and engaging with stakeholders to support businesses to implement the legislation's requirements; and
- Amending the list of HMRC-recognised payroll providers on GOV.UK or producing a similar list, to include and highlight which payroll providers have the facility to produce payslips for free for small businesses.

12. Monitoring & review

12.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement:

"Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument. The instrument is concerned solely with the amendment of primary legislation and as such fall outside the scope of the government's policy objectives regarding provision for review".

13. Contact

13.1 Amrita Rose at the Department for Business, Energy and Industrial Strategy. Telephone: 020 7215 0733 or email: amrita.rose@beis.gov.uk for any queries regarding the instruments.