EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE ACT 1998 (AMENDMENT) REGULATIONS 2007

2007 No.

1. This explanatory memorandum has been prepared by The Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

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

2. Description

2.1 The Regulations amend section 3 of the National Minimum Wage Act 1998 ("the Act"). Section 3 of the Act provides, amongst other things, that regulations may be made to exclude certain classes of person from being persons who qualify for the minimum wage.

2.2 Regulation 2 amends section 3 of the Act in respect of the class which comprises persons who are *undertaking* a course of higher education. The previous word used was attending. Regulation 2 also inserts into section 3(1A) of the Act a new class of persons in relation to whom regulations may be made which exclude them being persons who qualify for the minimum wage. These are persons who will be undertaking a course of *further education* requiring attendance for a period of work experience.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments.

None.

4. Legislative Background

The Regulations are being made pursuant to powers in the parent legislation, the National Minimum Wage Act 1998, to amend section 3 of the Act to widen the Secretary of State's power to make regulations under that section. Regulations made under section 3 have previously excluded those in higher education. This amendment is to allow regulations to be made to exclude those in further education.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

Jim Fitzpatrick has made the following statement regarding Human Rights:

In my view the provisions of the draft National Minimum Wage Act 1998 (Amendment) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The national minimum wage was introduced on 1 April 1999 and creates an obligatory threshold pay level. The intention is to protect workers from unacceptably low rates of pay.

7.2 One of the current classes of persons in relation to whom regulations may be made which exclude them from being persons who qualify for the minimum wage are persons attending higher education courses that require a period of work experience. These regulations amend that class so that it covers persons undertaking higher education courses that require a period of work experience. Undertaking is broader than attending, allowing, for example, for the fact that some students may be taking courses by distance-learning. In addition, students required to do work experience as part of further education are brought into the list of persons in respect of whom regulations may be made exempting them from the national minimum wage.

7.3 Many learning programmes involve an element of work experience, usually designed to ensure that the classroom based or theoretical aspect of learning is complemented by an understanding of its practical application in the workplace. Work experience plays an important part in education, ensuring that students are fully equipped with the skills they will need for future success in their careers. We want to ensure that employers continue to offer opportunities for students to learn in the work place; in so doing they are contributing to education and should not be required to pay the national minimum wage to students who are in the workplace to learn. The regulations are designed to exempt students in this context from the national minimum wage.

7.4 It is not expected that there will be wide public interest in these amendments.

8. Impact

8.1 No significant impact is expected from these regulations.

9. Contact

Jolanta Edwards at the Department of Trade and Industry, Tel: 020 7215 2570 or e-mail: jolanta.edwards@dti.gsi.gov.uk who can answer any queries regarding the instrument.