EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) (No. 2) REGULATIONS 2016

2016 No. XXXX

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument amends the National Minimum Wage Regulations 2015.

2.2 This instrument increases the hourly rate of the National Minimum Wage ("NMW") for adults aged 21 years or over (but not yet aged 25), 18-20 year olds, 16-17 year olds and apprentices who are under the age of 19 or in the first year of their apprenticeship. This instrument also increases the maximum daily amount for living accommodation that is allowed to count towards pay for NMW purposes. These provisions will come into force on 1 October 2016.

2.3 The National Minimum Wage (Amendment) Regulations 2016 introduced the new National Living Wage ("NLW") as the new single hourly rate for adults aged 25 years or older and amended the percentage figure used to calculate the financial penalty imposed for underpayment of the NMW.

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 Disregarding minor or consequential amendments, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 This instrument implements all of the recommendations on the NMW rates contained in the 2016 report of the Low Pay Commission ("the LPC"), but does not change the NLW rate implemented by the National Minimum Wage (Amendment) Regulations 2016.

4.2 The LPC is an independent body which assisted with the introduction of the NMW and which has the continuing function under the National Minimum Wage Act 1998 of reporting on matters relating to the NMW that are referred to it by the Secretary of State.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

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

6. European Convention on Human Rights

6.1 The Minister of State for Skills has made the following statement regarding Human Rights:

"In my view the provisions of the National Minimum Wage (Amendment) (No. 2) Regulations 2016 are compatible with the Convention rights."

7. Policy background

What is being done and why

7.1 The NMW 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 and provide incentives to work.

7.2 Decisions on NMW rates and other related matters are usually based on recommendations made by the LPC. The LPC's 2016 report was published on 14 March 2016. Copies of the report and the Government's response have been presented to both Houses. A copy of this report is attached to this memorandum. This instrument follows the recommendations of the LPC on the NMW rates.

7.3 The Government believes that this instrument will be of public interest because the Low Pay Commission estimates in its report that almost half a million low paid workers stand to benefit from the NMW rate increases.

Consolidation

7.4 There are no plans to further consolidate the NMW Regulations.

8. Consultation outcome

8.1 The LPC carries out a wide-ranging consultation and fact-finding exercise before arriving at its recommendations, including taking written and oral evidence and making a series of visits throughout the UK. Details of this consultation are referred to in its annual report.

9. Guidance

9.1 Information about NMW regulations and requirements can be found on the Gov.uk website.

10. Impact

10.1 We expect that there will be an impact on business, charities or voluntary bodies. This will be detailed in the forthcoming Impact Assessment.

10.2 We expect that there will be an impact on the public sector. This will be detailed in the forthcoming Impact Assessment.

10.3 An Impact Assessment will be submitted before scrutiny of the draft regulations in both Houses of Parliament and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website. The Low Pay Commission's Spring 2016 report provides initial commentary on the implications of the recommended NMW rates (pages 254 – 259). The Low Pay Commission estimates that the coverage of the recommended NMW rates will increase slightly compared to the estimated coverage of the current NMW – from around 450,000 to around 480,000. In addition,

the bite of the main NMW rate (the rate relative to median earnings) will remain relatively flat, based on OBR forecasts for average earnings.

11. Regulating small business

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

11.2 The LPC's recommendations were based upon extensive analysis and gathering of evidence, including evidence received from, and discussion with, small businesses and their representatives.

12. Monitoring & review

12.1 The LPC monitors, evaluates and reviews the NMW rates on an annual basis. In doing this, it takes account of the state of the economy and employment and unemployment levels. The results of this work are published in its annual report.

12.2 The Minister of State for Skills has made the following statement regarding the duty to review regulatory provisions in secondary legislation: it is not appropriate in the circumstances to make provision for review by the Secretary of State in the National Minimum Wage (Amendment) (No 2) Regulations 2016. This is because a requirement on the Secretary of State to carry out a review of the Regulations would undermine established arrangements in which the Secretary of State, under the powers in the National Minimum Wage Act, routinely consults with the LPC to undertake a review of the NMW rates which are set out in secondary legislation.

13. Contact

13.1 Simon McGlone at the Department for Business, Innovation and Skills, tel: 0207 215 4253 or email: simon.mcglone@bis.gsi.gov.uk, can answer any queries regarding the instrument.