EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) REGULATIONS 2011

2011 No. [XXXX]

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 National Minimum Wage (Amendment) Regulations 2011 ("the Regulations") amend the National Minimum Wage Regulations 1999. Regulations 1 and 4 will come into force on 1 August 2011. The remaining provisions will come into force on 1 October 2011.

2.2 The Regulations increase the hourly rate of the National Minimum Wage ("NMW") for adults (that is, those aged 21 years and older); 18-20 year olds; 16 – 17 year olds; and apprentices who are either aged 19 or who are over 19 and in the first year of their apprenticeship. They also increase the maximum daily amount for living accommodation that is allowed to count towards pay for NMW purposes ("the accommodation offset").

2.3 The Regulations also reflect the changes that have been made to the names of certain pre-apprenticeship programmes in Wales; and clarify the circumstances in which individuals taking part in some Government employment programmes are exempt from the NMW.

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

3.1 None.

4. Legislative Context

4.1 The Regulations implement recommendations on the NMW rates contained in the 2011 report of the Low Pay Commission ("the LPC"). 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. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister for Employment Relations, Consumer and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of the National Minimum Wage (Amendment) Regulations 2011 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 2011 report was published on 7 April 2011. Copies of the Government's written statement concerning the LPC's recommendations were placed in the Library of the House of Commons and the Library of the House of Lords on that date. The increases in the hourly rates and the accommodation offset amount contained in the Regulations are those recommended by the LPC in its report.

7.3 The Government believes that these elements of the Regulations will be of public interest because it estimates that just over 900,000 low paid workers stand to benefit from the NMW rate increases.

7.4 The National Minimum Wage Regulations 1999 provide an exemption from the NMW for workers participating in a Government scheme under section 2 of the Employment and Training Act 1973 to provide training, work experience or temporary work, or to assist in seeking or obtaining work. The Regulations provide that schemes provided under section 17B of the Jobseekers Act 1995 are treated in the same way as schemes provided under section 2. Section 17B provides powers for the Government's Work Programme, a national employment initiative which will replace much of the existing employment provision for the majority of Jobseeker's Allowance claimants. The amendment is intended to take account of these new programmes by treating individuals taking part in them in the same way as individuals taking part in previous employment programmes. The Regulations also make consequential changes as a result of changes in the names for certain pre-apprenticeship programmes in Wales.

7.5 It is not expected that there will be wide public interest in the amendment relating to Work Programmes or the changes to the names of the pre-apprenticeship programmes. They either make consequential changes or will have limited effect.

- Consolidation

7.6 The 1999 Regulations have been amended many times and the Department is aware of the need to consolidate these Regulations. Resources have not permitted the Department to produce a consolidated version of these Regulations to date. The Government has asked the LPC in the remit for its 2012 report to consider whether NMW regulations can be made even simpler and easier to administer, which might include the removal, simplification or consolidation of any elements of the NMW. The Government will consider the issue further in the light of the LPC's report.

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 Extensive guidance on NMW rates and the operation of the Regulations is provided on the DirectGov and Business Link websites.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the increases in the NMW rates is estimated to be £0 million cost. This is because the NMW is not rising faster than average earnings (excluding bonuses) in October 2011. The NMW is now part of employment practices and implementation costs of administering the proposed increase will be minimal.

10.2 The impact on the public sector of the increases in the NMW rates is estimated to be £0 million cost for the reasons set out above.

10.3 An impact assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the OPSI website.

10.4 The changes to the names of the pre-apprenticeship programmes and the clarification re DWP will have no impact on business.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to provide clear guidance.

11.3 The basis for the final decision on what action to take to assist small business was the consideration by the LPC of the impact on small firms. The LPC's remit required them to consider the impact of the NMW on small firms. Their recommendations were based upon extensive analysis and gathering of evidence, including evidence received from, and discussion with, small businesses and their representatives.

11.4 The other changes in the Regulations will have no impact on small firms.

12. Monitoring & review

12.1 Each year the LPC is commissioned to: monitor, evaluate and review the national minimum wage and its impact, with particular reference to the effect on pay, employment and competitiveness in the low paying sectors and small firms; the effect on different groups of workers, including different age groups, ethnic minorities, women and people with disabilities and migrant workers and the effect on pay structures. The results of this work are published in its annual report.

13. Contact

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