EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) REGULATIONS 2012

2012 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.

2. Purpose of the instrument

2.1 The National Minimum Wage (Amendment) Regulations 2012 ("the Regulations") amend the National Minimum Wage Regulations 1999. The provisions will come into force on 1 October 2012.

2.2 The Regulations increase the hourly rate of the National Minimum Wage ("NMW") for adults aged 21 years and older, and apprentices for who are under the age of 19 or 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 changes that have been made to the names of the apprenticeship programmes in England. They also make it clear that deductions or payments for the provision of accommodation which is exempt from the NMW accommodation rules (because it is provided by Higher Education and Further Education Institutions to a worker who is enrolled on a full-time course with that institution) do not reduce remuneration for NMW purposes.

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 2012 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 2012 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 2012 report was published on 19 March 2012. 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 the increases in the rates for adult workers and apprentices will be of public interest because it estimates that around 958,000 low paid workers stand to benefit.

7.4 It is not expected that there will be wide public interest in the changes to the names of the English apprenticeship programmes or the amendments to the provisions on deductions and payments for accommodation. These are consequential changes.

- Consolidation

7.5 The 1999 Regulations have been amended many times and the Department is aware of the need to consolidate these Regulations. As part of the Employment Law Review, the Department will be producing a draft set of consolidated regulations by March 2013.

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 An impact assessment for the increases in the NMW rates is attached to this memorandum and will be published alongside the memorandum on www.legislation.gov.

10.2 The changes to the names of the apprenticeship programmes and the clarification of the accommodation offset provisions 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.

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

Rob Cottam at the Department for Business Innovation and Skills, Tel: 020 7215 0169 or email: rob.cottam@bis.gsi.gov.uk can answer any queries regarding the instrument.