EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) REGULATIONS 2013

2013 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 2013 ("the Regulations") amend the National Minimum Wage Regulations 1999. The provisions will come into force on 1 October 2013.

2.2 The Regulations increase the hourly rate of the National Minimum Wage ("NMW") for adults aged 21 years or older, 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. The Regulations also increase the maximum daily amount for living accommodation that is allowed to count towards pay for NMW purposes.

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

3.1 None.

4. Legislative Background

4.1 The Regulations implement the majority of the recommendations on the NMW rates contained in the 2013 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 ("the Act") 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 in the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the National Minimum Wage (Amendment) Regulations 2013 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 2013 report was published on 15 April 2013. Copies of the report and the Government's response have been presented to both Houses. The Regulations follow the recommendations of the LPC on the NMW rates with the exception of the apprentice rate. The LPC's 2013 report recommended that the apprentice rate should be frozen at £2.65 an hour from 1 October 2013. The Government believes that it is important to maintain the relative position of the apprentice rate compared to benefits and the youth rates to preserve the attractiveness of apprenticeships for young people. The Government concluded that a 1% increase in the apprentice rate would be appropriate. Where the Secretary of State makes Regulations which depart from an LPC rate recommendation, a Report is to be laid before each House of Parliament containing a statement of the reasons for the decision. A copy of this Report is attached to this memorandum.

7.3 The Government believes that the Regulations will be of public interest because it estimates that around 2 million low paid workers stand to benefit from the NMW rate increases.

- Consolidation

7.4 The Department are consolidating the numerous NMW regulations into a single set of regulations. We will introduce the improved set of regulations, following consultation, during this Parliament.

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 Key messages about NMW regulations and requirements have been transferred from the DirectGov and Business Link websites onto the Gov.uk website. This Government will provide further guidance and case studies to assist employers and low paid workers in their understanding of their rights and responsibilities regarding the minimum wage.

10. Impact

10.1 A regulatory impact assessment of the increases in the NMW rates is attached to this memorandum and will be published on the www.legislation.gov website.

10.2 The impact on business of the increases in the NMW rates is estimated to be a £228.3 million cost. This is because the Department believes that in the absence of any statutory requirement to increase the NMW, employers would freeze the wage rates of low paid workers. The NMW is now part of employment practices and implementation costs of administering the proposed increase will be minimal.

10.3 Within this figure, this Department estimates that around 32,000 apprentices stand to benefit from the increase in the NMW rate and that it will cost employers £1.9 million (a direct impact on business of £1.8 million) in increased wage bills. In order to make this coverage estimate, the Department has assumed that all individuals counted by the Annual Survey of Hours and Earnings (ASHE) earning at or below £2.68 are apprentices. This is because, using ASHE, it is not possible to distinguish between whether an individual is an apprentice or not.

11. Regulating small business

11.1 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.

13. Contact

13.1 Helen McDaniel at the Department for Business Innovation and Skills, Tel: 020 7215 2041 or email: helen.mcdaniel@bis.gsi.gov.uk can answer any queries regarding the instrument.

Department for Business Innovation & Skills

NATIONAL MINIMUM WAGE ACT 1998

Regulations implementing the National Minimum Wage – a report by the Secretary of State for Business, Innovation and Skills

JUNE 2013

NATIONAL MINIMUM WAGE ACT 1998

REGULATIONS IMPLEMENTING THE NATIONAL MINIMUM WAGE – A REPORT BY THE SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS

REGULATIONS IMPLEMENTING THE NATIONAL MINIMUM WAGE – A REPORT BY THE SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS

1. This report is laid before Parliament in accordance with sections 5 and 6 of the National Minimum Wage Act 1998, reproduced in **Annex A**. Where matters are referred to the Low Pay Commission (LPC) and the regulations depart from any of its rate recommendations, sections 5(4) and 6(3) require the Secretary of State to lay a report before each House of Parliament containing a statement of the reasons for the decision.

2. The remit for the LPC's 2013 report was issued on 14 June 2012. A copy of this remit is enclosed at **Annex B**. The LPC was asked, among other things, to "monitor, evaluate and review the levels of each of the different NMW rates and make recommendations on the levels it believes should apply from October 2013".

3. The report of the LPC was submitted to Government in February 2013. On 15 April 2013, the Government announced our response to the recommendations contained in this report (a copy of this response is enclosed at **Annex C**). Copies of the LPC's report have been laid in the libraries of each House.

4. The draft National Minimum Wage (Amendment) Regulations 2013 will follow the recommendations of the LPC on the minimum wage rates with the exception of the apprentice rate. The apprentice rate applies to apprentices who are aged 19 or under or in the first year of their Apprenticeship.

5. The LPC's 2013 report recommended that the apprentice rate should be frozen at £2.65 an hour from 1 October 2013. The principal reason for this recommendation was the high level of non-compliance for young apprentices which, the LPC considered, undermined the case for an increase in the apprentice rate. The LPC also recommended that the Government should combine a communications campaign and a targeted enforcement initiative to ensure that the apprentice rate is known to employers and apprentices and that infringers are caught, punished and, wherever appropriate, named.

6. The Government carefully considered the evidence and the LPC's recommendations in its 2013 report. We recognise the challenges that the LPC has faced as a result of the uncertain economic environment. It has produced a detailed report and we are very grateful for all the hard work that the Commissioners have put into developing their recommendations.

7. The Government accepts the overall structure of the LPC's rate recommendations and its underlying analysis of the labour market, which strike the right balance between employment, wages and fairness. We accept in full the LPC's recommendations on the adult and youth rates – which cover the vast majority of those on the minimum wage.

8. As noted above, in making its recommendation that the apprentice rate should be frozen, the LPC has put great weight on the findings of non-compliance in respect of young apprentices. The Government entirely agrees with the LPC's concern about non-compliance. We are absolutely clear that employers must pay their staff at least the minimum wage. We are investigating the reasons for the reported levels of non-compliance with the apprenticeship minimum wage to enable us to decide on the best course of action.

9. Apprenticeships are a key Government policy and it is important that Apprenticeships are truly valued by both employers and apprentices. After careful consideration, the Government has concluded that there are important reasons that mean we should make a modest increase in the apprentice rate.

10. We consider that it is important to maintain the relative position of the apprentice rate compared to benefits and the youth rates to preserve the attractiveness of Apprenticeships for young people. The apprentice rate balances incentives for employers and a fair deal for apprentices. The minimum wage is just that, and many employers pay more, but the Government does not want to see those who rely on this safety net falling further behind others in the labour market.

11. We also noted the findings of the LPC that the apprentice rate has risen significantly since it was introduced in 2010 and that there has recently been a fall in Apprenticeship starts among 16-18 year olds in England. At the same time, the LPC heard evidence that pay is not the decisive factor in employers' decisions to take on apprentices.

12. Taking all the issues into account, we consider that the increase in the apprentice rate should be a modest one. We concluded that a 1% (equivalent to 3p an hour) increase in the apprentice rate would be appropriate. This would mean an increase in the apprentice rate from £2.65 to £2.68 an hour. The increase is in line with increases in benefits and public sector pay and is in line with the LPC's recommended increases in the youth minimum wage rates. Evidence in the LPC's report shows that the majority of apprentices paid at and just above the apprentice rate are young people. We consider that the modest level of this increase would not have significant adverse effects on the level of employment or training for apprentices.

13. Going against an LPC rate recommendation is not a step which the Government has taken lightly. We do not question the LPC's analysis of the labour market, which is detailed and compelling, as it has been in previous years. Where we take a different approach has been in relation to the impact of non-compliance on the appropriate level of the apprentice rate. As we concluded in our Triennial Review of the LPC, which was published in March 2013, the LPC has played a vital role in achieving the success of the minimum wage and is highly valued by stakeholders. We look forward to working with the LPC to ensure that the minimum wage continues to be a successful policy.

Vince Cable

Secretary of State for Business, Innovation and Skills

Annex A

EXTRACT FROM NATIONAL MINIMUM WAGE ACT 1998

The first regulations: referral to the Low Pay Commission

5. - (1) Before making the first regulations under section 1(3) or (4) or 2 above, the Secretary of State shall refer the matters specified in subsection (2) below to the Low Pay Commission for their consideration.

(2) Those matters are—

(a) what single hourly rate should be prescribed under section 1(3) above as the national minimum wage;

(b) what period or periods should be prescribed under section 1(4) above;

(c) what method or methods should be used for determining under section 2 above the hourly rate at which a person is to be regarded as remunerated for the purposes of this Act;

(d) whether any, and if so what, provision should be made under section 3 above; and

(e) whether any, and if so what, descriptions of person should be added to the descriptions of person to whom section 3 above applies and what provision should be made under that section in relation to persons of those descriptions.

(3) Where matters are referred to the Low Pay Commission under subsection (1) above, the Commission shall, after considering those matters, make a report to the Prime Minister and the Secretary of State which shall contain the Commission's recommendations about each of those matters.

(4) If, following the report of the Low Pay Commission under subsection (3) above, the Secretary of State decides—

(a) not to make any regulations implementing the Commission's recommendations, or

(b) to make regulations implementing only some of the Commission's recommendations, or

(c) to prescribe under section 1(3) above a single hourly rate which is different from the rate recommended by the Commission, or

(d) to make regulations which in some other respect differ from the recommendations of the Commission, or

(e) to make regulations which do not relate to a recommendation of the Commission,

the Secretary of State shall lay a report before each House of Parliament containing a statement of the reasons for the decision.

(5) If the Low Pay Commission fail to make their report under subsection (3) above within the time allowed for doing so under section 7 below, any power of the Secretary of State to make regulations under this Act shall be exercisable as if subsection (1) above had not been enacted.

Referral of matters to the Low Pay Commission at any time

6. (1) The Secretary of State may at any time refer to the Low Pay Commission such matters relating to this Act as the Secretary of State thinks fit.

(2) Where matters are referred to the Low Pay Commission under subsection (1) above, the Commission shall, after considering those matters, make a report to the Prime Minister and the Secretary of State which shall contain the Commission's recommendations about each of those matters.

(3) If on a referral under this section—

(a) the Secretary of State seeks the opinion of the Low Pay Commission on a matter falling within section 5(2) above,

(b) the Commission's report under subsection (2) above contains recommendations in relation to that matter, and

(c) implementation of any of those recommendations involves the exercise of any power to make regulations under sections 1 to 4 above,

subsection (4) of section 5 above shall apply in relation to the report, so far as relating to the recommendations falling within paragraph (c) above, as it applies in relation to a report under subsection (3) of that section.

(4) If on a referral under this section—

(a) the Secretary of State seeks the opinion of the Low Pay Commission on any matter falling within section 5(2) above, but

(b) the Commission fail to make their report under subsection (2) above within the time allowed under section 7 below,

the Secretary of State may make regulations under sections 1 to 4 above as if the opinion of the Commission had not been sought in relation to that matter.

Annex B

LOW PAY COMMISSION REMIT - 2013 REPORT

The Government supports the National Minimum Wage (NMW) because of the protection it provides to low paid workers and the incentives to work it provides. Our aim is to have NMW rates that help as many low-paid workers as possible, while making sure that we do not damage their employment prospects.

The Low Pay Commission (LPC) is asked to:

1. Monitor, evaluate and review the levels of each of the different NMW rates and make recommendations on the levels it believes should apply from October 2013.
2. Review the contribution the NMW could make to the employment prospects of young people, including those in apprenticeships. As part of this review, the LPC is asked to consider the implications of the introduction of the Raising of the Participation Age in England on the youth rates and the apprentice rate.
3. Review the accommodation offset.
4. Evaluate the regulations for salaried hours workers and consider whether there are any measures that the Government could take to ensure that it is as simple and easy as possible for employers to make sure they are paying at least the NMW and for individuals to be confident that they are being paid at least the NMW.

In evaluating and making recommendations in the areas set out above, the LPC is asked to take account of the state of the economy and employment and unemployment levels. There is also the wider policy context to consider, including pensions' reform, the introduction of universal credit, the raising of the personal tax allowance, any implications of the proposed abolition of the Agricultural Wages Board for England and Wales (pending the outcome of the legislative process), and other Government reforms that may affect the NMW.

Timing

The LPC is asked to report to the Prime Minister, Deputy Prime Minister, and the Secretary of State for Business, Innovation and Skills by the end of February 2013.

Annex C

NATIONAL MINIMUM WAGE – GOVERNMENT RESPONSE TO THE 2013 LOW PAY COMMISSION REPORT

The main recommendations put forward by the Low Pay Commission concern the rates of the National Minimum Wage.

The Commission has recommended that the adult hourly rate of the National Minimum Wage should increase from £6.19 to £6.31. The Commission has recommended increasing the development rate which covers workers aged 18-20 years old from £4.98 to £5.03 and increasing the rate for 16-17 year olds from £3.68 to £3.72. It recommends that the apprentice rate should remain at £2.65. It is recommended that these changes take place in October 2013.

The Commission has also recommended that the accommodation offset increases from the current £4.82 to £4.91 in October 2013.

The Government accepts the recommendations on the adult and youth rates and on the accommodation offset, but has concluded that the apprentice rate should be increased by 3p from 1 October 2013.

Government's response to individual recommendations in the Low Pay Commission's 2013 report

National Minimum Wage Rates

We recommend that the adult rate of the National Minimum Wage be increased by 1.9 per cent, or 12 pence, to £6.31 an hour, from 1 October 2013.

We recommend an increase of 1 per cent in the Youth Development Rate to £5.03 an hour and in the 16-17 Year Old Rate to £3.72 an hour from 1 October 2013.

We recommend that the accommodation offset be increased by 1.9 per cent, to £4.91 a day, from 1 October 2013.

ACCEPT

We recommend that the Apprentice Rate should remain at £2.65 an hour from 1 October 2013.

REJECT

The Government shares the LPC's concern about non-compliance with the apprentice minimum wage and are clear that employers must pay their staff at least the minimum wage. However, we believe that it is important to maintain the relative position of the apprentice rate compared to benefits and the youth rates to preserve the attractiveness of Apprenticeships for young people. The Government has concluded therefore that a 1% increase in the apprentice rate would be appropriate. This is in line with the recommended increases in the youth rates; evidence in the LPC's report shows that the majority of apprentices paid on and just above the apprentice rate are young people. It is also the planned level of benefit increases. We consider that the modest level of this increase would not have significant adverse effects on employment or training for apprentices. In conjunction with this we are putting in place a package of measures to improve compliance, including focused communications and targeted enforcement by HMRC.

Accommodation Offset

We recommend that the accommodation offset should remain the only permitted benefit-in-kind that can count towards payment of the National Minimum Wage and there should be only one rate. It should apply irrespective of whether the worker has a choice over taking the accommodation.

ACCEPT

Salaried-hours Workers

We recommend that the regulations for salaried-hours workers continue to be required in all their essentials. In order to make it as simple and easy as possible to achieve National Minimum Wage compliance the Government should adapt its guidance to include examples and an on-line means of determining what payment is required.

ACCEPT

Compliance

We recommend that the Government should combine a communications campaign and a targeted enforcement initiative to ensure that the Apprentice Rate is known to employers and apprentices, and that infringers are caught, punished, and wherever appropriate, named.

ACCEPT

We recommend that contracts issued by public bodies which commission the provision of social care should contain a clause requiring at least the National Minimum Wage to be paid, just as they may require compliance with other aspects of the law, such as health and safety legislation. The Government should take responsibility for bringing this about.

NOTE

The Government agrees with the LPC's aim of reducing non-compliance in this sector. However, we do not believe that restating existing law in contracts would set a helpful precedent or make a significant impact on behaviours. Rather, there are other measures and support to improve compliance which would be more effective in addressing the problems we have identified in the social care sector. The Department of Health and the Department for Communities and Local Government are working together to develop such measures.

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

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