EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) 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 The National Minimum Wage (Amendment) Regulations ("the Regulations") amend the National Minimum Wage Regulations 2015 ("the 2015 Regulations") and the National Minimum Wage Act 1998 ("the 1998 Act").

2.2 They introduce the new National Living Wage ("NLW") as the new single hourly rate for adults aged 25 years or older. These Regulations provide for the NLW to be calculated by adding together the living wage premium and the main national minimum wage rate. These Regulations set the living wage premium at 50 pence.

2.3 These Regulations also amend the percentage figure specified in section 19A(5) of the 1998 Act which is used to calculate the financial penalty imposed for underpayment of the national minimum wage ("the NMW"). The financial penalty is calculated as a percentage of the total underpayment as set out in the notice of underpayment served on the employer by the officer enforcing national minimum wage legislation. These Regulations increase the percentage figure from 100% to 200% of the arrears owed by employers to the employee.

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 changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 These Regulations implement the Chancellor's commitment in the Summer budget to introduce a National Living Wage for workers aged 25 years and over. The rate of the NLW would be set at £7.20 from April 2016 and thereafter amended following recommendations by the independent Low Pay Commission.

4.2 These regulations give effect to the NLW by amending the single hourly rate of the National Minimum Wage as provided for in the 2015 Regulations. The 2015 Regulations came into force on 6 April 2015. They consolidated the National Minimum Wage Regulations 1999 and subsequent amending regulations with the purpose of making the rules clearer and more workable for employers and employees.

4.3 These Regulations also increase the penalty which must be paid by an employer who has underpaid the NMW. Where an HMRC officer is of the opinion that an employer has not paid a worker the national minimum wage, or has not fully repaid any arrears which the worker is entitled to, the officer may serve a notice of underpayment requiring the employer to pay arrears to the worker or workers named in the notice.

4.4 Section 19A of the 1998 Act provides that the notice of underpayment must require the employer to pay a financial penalty to the Secretary of State within 28 days of service of the notice unless the Secretary of State has, by directions, specified circumstances in which a penalty is not to be imposed.

4.5 The current financial penalty is set at 100% of the underpayment of the NMW for each worker specified in the notice of underpayment. The minimum penalty is £100 per worker and the maximum penalty is £20,000 per worker. Where arrears are paid within 14 days of service of the notice, the penalty is reduced by 50%.

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) 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 The Government announced plans to introduce a National Living Wage as part of wider measures to move from a high welfare, high tax, low wage economy, to a lower welfare, lower tax and higher-wage one. The Government has set a clear ambition for the NLW to rise to 60% of average earnings by 2020 – currently expected to be equivalent to around £9 per hour.

7.3 Future increases in the National Living Wage will be decided following recommendations and advice from the independent Low Pay Commission (LPC). The LPC have been asked to make their recommendations for the NLW in April 2017 by October 2016.

7.4 The Government also wants to increase the penalties imposed on employers that underpay their workers in breach of the NMW legislation. By increasing the penalties for underpayment of the National Minimum Wage and National Living Wage it is intended that employers who would otherwise be tempted to underpay comply with the law and working people receive the money they are legally due.

7.5 Employers that comply with the NMW will not be negatively affected by these changes. Improving compliance also helps workers receive the pay they are entitled to. In 2014/15, we found arrears for over 26,000 workers.

7.6 The financial penalty is calculated as a percentage of the total arrears of national minimum wage for all workers specified in the notice of underpayment issued by an HMRC officer. The Secretary of State has the power by regulations to substitute a different percentage for calculating the financial penalty.

7.7 The Government is increasing the percentage from 100% to 200%. A penalty calculation set at 200% of the arrears owed and reduced by half for prompt payment ensures a penalty at least the equivalent to the arrears owed.

Consolidation

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

8. Consultation outcome

8.1 The Office for Budget Responsibility were consulted and have published a report on the likely impact of the NLW. The LPC will consult publically on the impact of the policy, including consultation on future increases.

9. Guidance

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

10. Impact

10.1 In relation to the provisions of these Regulations which introduce the National Living Wage, we have set out the impact on businesses, charities and voluntary bodies within the impact assessment which is submitted with this memorandum. We consider that the provisions of these Regulations which increase the penalties imposed on employers that underpay their workers in breach of the NMW legislation will impose no additional costs on compliant businesses. They only affect employers that do not comply with minimum wage law.

10.2 In relation to the provisions of these Regulations which introduce the National Living Wage, we have set out the impact on the public sector within the impact assessment which is submitted with this memorandum. We consider that the provisions of these Regulations which increase the penalties imposed on employers that underpay their workers in breach of the NMW legislation will impose no additional costs on the public sector. They only affect employers that do not comply with minimum wage law.

10.3 In relation to the provisions of these Regulations which introduce the National Living Wage, an Impact Assessment is submitted with this memorandum and is published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

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

11.2 In relation to the introduction of the National Living Wage, we have set out in the associated Impact Assessment why it is appropriate for both economic and equity

reasons that the regulations apply to such businesses. The Government is also introducing separate measures that will ease the burden on small businesses. As above, the penalties imposed on employers that underpay their workers in breach of the NMW legislation will impose no additional costs on compliant businesses

11.3 An Impact Assessment has been submitted with this memorandum.

12. Monitoring & review

12.1 The LPC monitors, evaluates and reviews the NMW rates on an annual basis and reports its findings to Government. In future, this will include reporting on the NLW. In doing this, the LPC 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) 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.