EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) REGULATIONS 2019

2019 No. XXXX

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy 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 single, main hourly rate of the National Living Wage or "NLW" which was introduced in April 2016 for working people aged 25 and over. This instrument also increases the hourly rate of the National Minimum Wage or "NMW" for workers aged 21 years or over (but not yet aged 25), workers aged 18 years or over (but not yet aged 21), those under the age of 18 and apprentices who are under the age of 19 or in the first year of their apprenticeship.

2.3 The rates have been increased in line with the recommendations of the Low Pay Commission ("LPC"). The LPC is an independent and expert body which makes recommendations to the Government on the rates of NMW and NLW as well as other wage related issues. Each of the rates listed in the table below have been accepted by the Government and are due to come into force on 1 April 2019, subject to Parliamentary approval.

	Current rate	LPC recommendation	Annual increase
National Living Wage (25+)	£7.83	£8.21	4.9%
Adult rate (21-24 year olds)	£7.38	£7.70	4.3%
Development rate (18-20 year olds)	£5.90	£6.15	4.2%
Youth rate (16-17 year olds)	£4.20	£4.35	3.6%
Apprentice rate	£3.70	£3.90	5.4%

2.4 In addition, this instrument increases the maximum daily amount for living accommodation from £7.00 to £7.55, known as the accommodation offset rate, which is allowed to count towards pay for NMW and NLW purposes.

2.5 All of these provisions will come into force on 1 April 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

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

4. Extent and Territorial Application

4.1 The extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom, the territorial waters of the United Kingdom and the United Kingdom sector of the continental shelf.

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

"In my view the provisions of the National Minimum Wage (Amendment) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument implements all of the recommendations on the NMW and NLW rates contained in the autumn 2018 report of the Low Pay Commission ("the LPC").

6.2 The LPC is an independent body which has the function under the National Minimum Wage Act 1998 ("the 1998 Act") of reporting on matters relating to the NMW and NLW that are referred to it by the Secretary of State for Business, Energy and Industrial Strategy.

6.3 The LPC makes its recommendations to Government regarding the NMW and NLW rates by gathering extensive evidence from across the economy including from workers, their representatives and employers.

7. Policy background

What is being done and why?

7.1 The NMW was introduced on 1 April 1999 by the 1998 Act and creates an obligatory threshold pay level. The intention is to protect workers from unacceptably low rates of pay and provide incentives to work. The NLW was introduced in on 1 April 2016 and created an additional obligatory threshold pay level which applies to workers aged 25 years and older.

7.2 Decisions on NMW and NLW rates as well as other related matters are usually based on recommendations made by the LPC. The LPC's autumn report 2018 was published in November 2018. Copies of the report and the Government's response have been presented to both Houses. A copy of this report can be found online using the following link: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/759271/National_Minimum_Wage_-_Low_Pay_Commission_2018_Report.pdf.

7.3 The accommodation offset was introduced in 1999 and provides protection to workers who live in employer-provided accommodation against an excessive reduction in their income and gives some recognition of the value of the benefit.

7.4 This instrument follows the recommendations of the LPC on the NMW, NLW and accommodation offset rates.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

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

10. Consultation outcome

10.1 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 autumn report 2018.

11. Guidance

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

12. Impact

12.1 The impact on business, charities or voluntary bodies is available in the Impact Assessment.

12.2 The impact on the public sector is available in the Impact Assessment.

12.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.4 The LPC's autumn report 2018 also provides initial commentary on the implications of the recommended rates in chapter 6.

13. Regulating small business

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

13.2 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.

14. Monitoring & review

14.1 The LPC monitors, evaluates and reviews the NMW and NLW rates on an annual basis and reports its findings to Government. 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.

14.2 The Minister for Small Business, Consumers and Corporate Responsibility 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 2019. 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."

15. Contact

15.1 Patrick Day at the Department for Business, Energy and Industrial Strategy, Telephone: 020 7215 3078 or email: Patrick.Day@beis.gov.uk, can answer any queries regarding the instrument.

15.2 Tom Griffiths, Deputy Director for Analysis and Wages at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.