EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE REGULATIONS 1999 (AMENDMENT) REGULATIONS 2007

2007 No.

1. This explanatory memorandum has been prepared by The Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The National Minimum Wage Regulations 1999 (Amendment) Regulations 2007 ("the Amendment Regulations"), which come into force on 1 October 2007, amend the National Minimum Wage Regulations 1999.

2.2 The Amendment Regulations increase the principal (or adult) hourly rate of the national minimum wage, the development rate (for 18-21 year olds), and the 16 and 17 year old rate. They also increase the maximum amount for living accommodation that is allowed to count towards pay for national minimum wage purposes (the "accommodation offset").

2.3 The Amendment Regulations also amend regulation 12 of the National Minimum Wage Regulations 1999 to clarify that certain classes of workers are exempt from the national minimum wage. Workers attending work experience whilst undertaking a course of further education and workers participating in the Government provided Programme Led Apprenticeships scheme do not qualify for the national minimum wage.

2.4 The Amendment Regulations also amend regulation 12 of the National Minimum Wage Regulations 1999 so that workers participating in the next phase of the European Community Leonardo da Vinci programme and participants on the European Community Youth in Action programme do not qualify for the national minimum wage in respect of work done as part of those schemes.

2.5 The Amendment Regulations also clarify the application of regulation 31 of the National Minimum Wage Regulations 1999 which deals with the accommodation offset. When an employer provides accommodation to a worker he may deduct an amount for the provision of accommodation from the worker's pay. The maximum amount he may deduct is set by the accommodation offset. If more is deducted from the workers pay, this amount cannot count towards the calculation of the workers pay for national minimum wage purposes, therefore the worker may be entitled to additional pay in order to receive national minimum wage. The amendment is to clarify the position where the employer is a local authority or registered social landlord who provides accommodation to someone who is also a worker for him.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments.

None.

4. Legislative Background

4.1 The Regulations are being made pursuant to powers in the National Minimum Wage Act 1998.

4.2 Amendments to increase rates and the accommodation offset have been prepared in the light of recommendations contained in a report made by the Low Pay Commission, the independent body which assisted with the introduction of the national minimum wage and which has the continuing function of reporting on matters relating to the national minimum wage that are referred to it by the Secretary of State.

4.3 The Leonardo da Vinci programme is a vocational training programme for individuals from European Union Member States and their territories, European Economic Area countries (Norway, Iceland and Liechtenstein) and Turkey. The Government is concerned that fewer UK organisations might offer placements to incoming participants if the national minimum wage were payable. This in turn might have implications for the numbers of UK placements overseas.

4.4 The changes related to further education and the Programme Led Apprenticeships are extensions of provisions that already apply to higher education and apprenticeships and are in line with that.

4.5 Amendments to clarify the position for the accommodation offset and local authorities or registered social landlords are made to regulation 31 of the National Minimum Regulations 1999.

5. Extent

This instrument applies to all of the United Kingdom. Programme Led Apprenticeships are only operated in England.

6. European Convention on Human Rights

Jim Fitzpatrick has made the following statement regarding Human Rights:

In my view the provisions of the draft National Minimum Wage Regulations 1999 (Amendment) Regulations 2007 are compatible with the Convention rights.

7. Policy background

7.1 The national minimum wage 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.

7.2 Decisions on the rates of the national minimum wage and other related matters are usually based on recommendations made by the Low Pay Commission. The Commission carries out a wide-ranging consultation and fact-finding exercise before arriving at its recommendations. The Commission presented its report on the national minimum wage to the Government in March 2007 and the Government made a written statement on 7 March 2007 in response. Copies of that statement and the report were placed in the Library of the House of Commons and the Library of the House of Lords on that date.

7.3 The increases in the hourly rates and the accommodation offset amount to be effected by these Regulations are those recommended by the Commission in its report.

7.4 The Government believes that these elements of the Regulations will be of public interest – in part because it estimates that around 1 million low paid workers stand to benefit from the national minimum wage rate increases.

7.5 The additions to regulation 12 (workers who do not qualify for the national minimum wage) are to ensure that those undertaking specified further education courses and participating in work experience do not qualify for the national minimum wage. This brings further education into line with the existing provisions within the regulations for higher education.

7.6 The changes also ensure that participants on Programme Led Apprenticeships do not qualify for the national minimum wage. These are learning courses related to apprenticeships. These are courses for young people wishing to follow apprenticeships for whom a permanent employer place is not

available. This is in line with the existing apprenticeship exemption in Regulation 12(3).

7.7 The second phase of the Leonardo da Vinci scheme is already exempt within the regulations. These changes extend the exemption to the next phase of the programme, and add in the similar European Community Youth Action Programme to the exemption.

7.8 In 2006 the Low Pay Commission made recommendations on the accommodation offset, including recommending that DTI update existing guidance, make available guidance on the types of circumstances in which they deem the employer to be the accommodation provider and implementing legislative measures to prevent employers using the device of a separate accommodation company to evade the accommodation offset. DTI did not need to introduce legislative measures, since a purposive interpretation of the current regulations already cover employers providing accommodation through a separate legal entity such as a separate company. Following consultation on the clarity of the guidance, on 2 April 2007 DTI published updated guidance on the circumstances in which someone will be considered to be providing accommodation. The amendment to regulation 31 will ensure deductions from pay and payments by workers to local authorities and registered social landlords in England, Scotland, Wales and Northern Ireland in respect of the provision of living accommodation are not covered by the regulations where no link exists between their role as employer and landlord. Where a connection does exist between the two roles, they are covered.

7.9 It is not expected that there will be wide public interest in these amendments. They clarify circumstances where the national minimum wage is not due.

8. Impact

8.1 The National Audit Office advised in its report on 'Evaluation of Regulatory Impact Assessments 2005-06' that an RIA is not necessary for the uprating of the national minimum wage, as this is a standardised procedure of an initiative that is an accepted part of legislation.

8.2 The Regulations have an impact upon the public sector in so far as they will increase the pay of some public sector workers.

9. Contact

Jolanta Edwards at the Department of Trade and Industry, Tel: 020 7215 2570 or e-mail: jolanta.edwards@dti.gsi.gov.uk who can answer any queries regarding the instrument.