EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE REGULATIONS 1999 (AMENDMENT) REGULATIONS 2010

2010 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 Regulations 1999 (Amendment) Regulations 2010 ("the Regulations") amend the National Minimum Wage Regulations 1999 and come into force on 1 October 2010.

2.2 The Regulations increase the hourly rate of the National Minimum Wage (NMW) for adults and provide that 21 year olds must be paid at least this rate. They also increase the hourly rates for 18-20 year olds and 16-17 year olds and increase the maximum amount for living accommodation that is allowed to count towards pay for NMW purposes (the "accommodation offset").

2.3 Apprentices who are either aged under 19, or who are over 19 and in the first year of their apprenticeship, do not currently qualify for the NMW. The Regulations provide that these apprentices will in future be entitled to a new hourly rate.

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

3.1 None.

4. Legislative Context

4.1 The Regulations implement recommendations contained in the 2010 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

Edward Davey, 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 Regulations 1999 (Amendment) Regulations 2010 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.

7.2 Decisions on NMW rates and other related matters are usually based on recommendations made by the LPC. 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. The LPC's 2010 report was published on 25 March 2010. 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 21 June 2010. The provisions in the Regulations are in accordance the LPC's recommendations.

7.3 The Government believes that the Regulations will be of public interest because it estimates that just under 1 million low paid workers stand to benefit from the NMW rate increases.

- ***Consolidation***

7.4 The 1999 Regulations have been amended many times and the Department is aware of the need to consolidate these Regulations. The Department aims to produce a consolidated version of these Regulations in 2011, if resources permit.

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. Changes to the national minimum wage regulations will be publicised as part of an awareness raising campaign.

10. Impact

10.1 The impact on business, charities or voluntary bodies of the increases in the NMW rates is estimated to be £0 million cost. This is because the NMW is not rising faster than average earnings (excluding bonuses) in October 2010. The NMW is now part of employment practices and implementation costs of administering the proposed increase will be minimal. We estimate, however, that the costs to business, charities or voluntary bodies of moving 21 year olds to the adult rate will be around £47.2 million.

10.2 The impact on the public sector of the increases in the NMW rates is estimated to be £0 million cost for the reasons set out above. We estimate that around 1.6% of 21 year olds are employed in the public sector and that the costs to the public sector will therefore be around £0.8 million.

10.3 An Impact Assessment is attached to this memorandum.

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

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