EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (VARIATION OF FINANCIAL PENALTY) REGULATIONS 2014

2014 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 (Variation of Financial Penalty) Regulations 2014 ("the Regulations") amend the National Minimum Wage Act 1998 (c.39) ("the Act").

2.2 The Regulations amend the figures specified in section 19A of the Act which are used to calculate financial penalties imposed for underpayment of the national minimum wage. 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. The Regulations increase the percentage figure from 50% to 100% and increase the figure for the maximum financial penalty from £5,000 to £20,000.

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

3.1 None.

4. Legislative Background

4.1 The Act and the National Minimum Wage Regulations 1999 (S.I. 1999/584) provide (subject to some exceptions) that workers are entitled to be paid at least the minimum wage which is specified as one of four hourly rates (depending on age or being on an apprenticeship). Her Majesty's Revenue and Customs ("HMRC") officers enforce the national minimum wage on behalf of the Government using the powers in sections 17 to 19H of the Act.

4.2 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.

4.3 Section 19A of the Act provides that the notice of underpayment must also 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.

4.4 The current financial penalty is set at 50% of the total underpayment of the national minimum wage for all workers specified in the notice of underpayment. The minimum penalty is £100 and the maximum penalty is £5,000. Where arrears are paid within 14 days of service of the notice, the penalty is reduced by 50%.

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 (Variation of Financial Penalty) Regulations 2014 are compatible with the Convention rights.

7. Policy Background

- What is being done and why

7.1 The Government wants to increase the penalties imposed on employers that underpay their workers in breach of the national minimum wage legislation. The increase in the penalty is intended to deter such employers and ensure that workers are correctly paid.

7.2 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 increase the cap of the financial penalty from £5,000 and to substitute a different percentage for calculating the financial penalty.

7.3 The Government is increasing the percentage from 50% to 100%. The Government is also increasing the maximum financial penalty from £5,000 to £20,000.

8. Consultation outcome

8.1 This instrument only changes the percentage figure used to calculate the financial penalty and the maximum penalty which can be issued. As there will be no impact on employers which comply with minimum wage laws, a consultation is not required.

9. Guidance

9.1 The Government's policy document on "HM Revenue & Customs enforcement, prosecution and naming employers who break national minimum wage law" will be updated to reflect these changes. Guidance, including detailed guidance to assist employers and low paid workers in their understanding of their rights and responsibilities regarding the national minimum wage, is available on the Gov.uk website.

10. Impact

10.1 We consider that the Regulations will impose no additional costs on compliant businesses since they only affect employers that do not comply with minimum wage law.

11. Regulating small business

11.1 The regulations do not impose any additional burdens on small businesses which comply with minimum wage legislation.

12. Monitoring & review

12.1 The policy will be kept under review through monitoring of compliance data.

13. Contact

Gurpreet Chana at the Department for Business Innovation and Skills can answer any queries regarding the instrument. Gurpreet can be contacted on 020 7215 6855 or Gurpreet.chana@bis.gsi.gov.uk