**EXPLANATORY MEMORANDUM TO**

**THE NATIONAL MINIMUM WAGE (AMENDMENT) (No.2) REGULATIONS 2011**

**2011 No. 2347**

**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.

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

## 2. Purpose of the instrument

2.1 The National Minimum Wage (Amendment) (No.2) Regulations 2011 ("the Regulations") amend the National Minimum Wage Regulations 1999 ("the 1999 Regulations"). The Regulations will come into force on 1 October 2011.

2.2 The Regulations exempt Higher Education and Further Education Institutions from the National Minimum Wage ("NMW") accommodation rules where they provide accommodation to a worker who is enrolled on a full-time course with that institution.

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

3.1 None.

## 4. Legislative Context

4.1 Following a public consultation, the Regulations implement the Government's conclusion that Higher Education and Further Education Institutions should not be subject to the NMW accommodation rules where they provide accommodation to a worker who is enrolled on a full-time course with that institution

## 5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

## 6. European Convention on Human Rights

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 (Amendment) (No.2) Regulations 2011 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 1999 Regulations cover the situation where an employer provides accommodation for a worker. The accommodation rules are designed to protect workers from employers who seek to get around the NMW by levying excessive accommodation charges. They allow an employer who provides accommodation to charge up to a daily amount, specified in the 1999 Regulations, even though this may reduce the worker's contractual pay to a level that is less than the NMW.

7.3 The Government considers that the relationship between Higher Education and Further Education Institutions and their students is, in most cases, primarily educational and, where an institution employs a student on a part-time basis, the relationship is not akin to the circumstances which the accommodation rules of the NMW were designed to cover. The Regulations therefore exempt these institutions from the accommodation offset rules where they provide accommodation to a student enrolled on a full-time higher or further course with the institution.

7.4 It is not expected that there will be wide public interest in these amendments. The Government estimates that less than 10,000 students will be affected by these changes.

- Consolidation

7.5 The 1999 Regulations have been amended many times and the Department is aware of the need to consolidate them. Resources have not permitted the Department to produce a consolidated version of the 1999 Regulations to date. The Government has asked the LPC in the remit for its 2012 report to consider whether the 1999 Regulations can be made even simpler and easier to administer, which might include the removal, simplification or consolidation of any elements of the NMW. The Government will consider the issue further in the light of the LPC's report.

## 8. Consultation outcome

8.1 The Department conducted a twelve week public consultation on whether there should be changes to the accommodation rules in relation to students who work part-time for their educational institutions. Thirty eight responses were received and there was an overwhelming consensus supporting the principle that the Government should change the law to address the current unintended consequences of the accommodation rules for Higher Education Institutions, and broad agreement on the same issue for further education. The consultation response is available on the BIS website.

## 9. Guidance

9.1 Extensive guidance on NMW rates and the operation of the Regulations is provided on the DirectGov and Business Link websites.

## 10. Impact

10.1 The changes to the accommodation rules for Higher Education and Further Education Institutions will give these institutions an exemption from the accommodation offset rules. The impact is estimated to be £0 million costs as it represents a transfer payment from the student to the institution and the net effect is zero. An impact assessment for these changes was published as part of the Government response to the consultation and is attached to this Memorandum.

## 11. Regulating small business

11.1 The changes in the 1999 Regulations will have no impact on small firms.

## 12. Monitoring & review

12.1 Each year the LPC is commissioned to: monitor, evaluate and review the NMW 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

Rob Cottam at the Department for Business Innovation and Skills, Tel: 020 7215 0169 or email: rob.cottam@bis.gsi.gov.uk can answer any queries regarding the instrument.