EXPLANATORY MEMORANDUM TO

THE NATIONAL MINIMUM WAGE (AMENDMENT) REGULATIONS 2021

2021 No. 329

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 ("the 2015 Regulations").

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 changes the age eligibility for the NLW to apply from age 23. 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 23), 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 2021, subject to Parliamentary approval.

2.4 In addition, this instrument increases the maximum daily amount for living accommodation from £8.20 to £8.36, known as the accommodation offset rate, which is allowed to count towards pay for NMW and NLW purposes.

	LPC recommendation	Current rate	Annual percent increase
National Living Wage rate (23+)	£8.91	£8.72	2.2%
21-22-year-old rate	£8.36	£8.20	2.0%
18-20-year-old rate	£6.56	£6.45	1.7%
Under 18-year-old rate	£4.62	£4.55	1.5%
Apprentice rate	£4.30	£4.15	3.6%
Accommodation offset (day rate)	£8.36	£8.20	2.0%

2.5 This instrument also increases the period of time employers are required to retain records for NMW enforcement purposes to 6 years (from 3 years). This follows a recommendation from the Director of Labour Market Enforcement ("DLME"), and aligns the length of time records must be kept by employers, with the time for which employers may be issued with a notice of underpayment for underpayment of the NMW.

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 The territorial application of this instrument includes Scotland and Northern Ireland.

4. Extent and Territorial Application

4.1 The territorial 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 Labour Markets has made the following statement regarding Human Rights:

"In my view the provisions of the National Minimum Wage (Amendment) Regulations 2021 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 LPC Report 2020.

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.

6.4 This instrument makes a change to record keeping requirements of employers, following the DLME's United Kingdom Labour Market Enforcement Strategy 2019/20.

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 objective is to maximise the wages of low paid workers without damaging their employment prospects by setting it too high. The NLW was introduced on 1 April 2016 and created an additional obligatory threshold pay level which applies to the oldest group of workers.

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 2020 report was published in December 2020. 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://www.gov.uk/government/publications/low-pay-commission-report-2020.

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.

7.5 Record-keeping requirements for employers are set out in the 2015 Regulations. The DLME identified the period of time employers must retain NMW records and the period of time for which HMRC NMW enforcement teams could take enforcement action was not consistent, and recommended they be aligned. A copy of the DLME strategy can be found online using the following link: https://www.gov.uk/government/publications/labour-market-enforcement-strategy-2019-to-2020.

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 or 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 2020 report.

10.2 The DLME ran a wide-ranging consultation informing their 2019/20 Enforcement Strategy. Details of this consultation are referred to in the report.

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 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.4 The LPC's 2020 report also provides initial commentary on the implications of the recommended rates in chapter 9.

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 2020 report.

14.2 The regulation does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Small Business, Consumers and Labour Markets has made the following statement:

"It is not appropriate in the circumstances to make provision for review by the Secretary of State in the National Minimum Wage (Amendment) Regulations 2021. 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 Flora Strange at the Department for Business, Energy and Industrial Strategy, Telephone: 0207 215 5424 or email: Flora.Strange@beis.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mike Warren, Director for Labour Markets at the Department for Business, Energy and Industrial Strategy, can confirm that this Explanatory Memorandum meets the required standard.

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