EXPLANATORY MEMORANDUM TO

THE WORKING TIME (AMENDMENT) REGULATIONS 2006

2006 No. 99

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

2. Description

2.1 The instrument amends the Working Time Regulations 1998 by removing regulation 20(2). The Working Time Regulations impose (amongst other things) limits on the maximum weekly working time and the length of night work of workers. Regulation 20(2) of those Regulations provided an exemption from those limits in cases where a worker's working time was partly unmeasured or determined by the worker himself.

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

3.1 None.

4. Legislative Background

4.1 The Working Time Regulations 1998 (SI 1998/1833) implement the Working Time Directive (93/104/EC now consolidated in Directive 2003/88/EC) which imposes limits on maximum weekly working time and night work and gives workers rights in respect of rest entitlement. Article 17(1) of the Directive provides that these limits do not apply to autonomous workers, i.e. workers whose working time is not measured or predetermined or who can themselves determine the duration of their working time, on account of the specific nature of their job.

4.2 Regulation 20 of the Working Time Regulations transposed Article 17(1). When the Working Time Regulations came into force in 1998, there were queries about the practical application of regulation 20 on the basis that very few workers, if any, perform work that is never measured or predetermined. The ambit of Article 17(1) was not immediately apparent but the Government did not believe that it was intended to be restricted to those workers whose working time was wholly unmeasured. Regulation 20(2) was therefore added in 1999 (SI 1999/3372) in an attempt to clarify the scope of the exception in domestic legislation.

4.3 The effect of this instrument is that the Working Time Regulations revert to the original drafting of Regulation 20. The instrument is made under section 2(2) of the European Communities Act 1972 and is subject to negative Parliamentary procedure.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Regulation 20(2) is currently the subject of infraction proceedings brought by the European Commission before the European Court of Justice. The Commission argues that workers who are not within the Article 17(1) exception (i.e. who are not autonomous) are wrongly deprived of some of the protection of the Directive through regulation 20(2).

7.2 During the course of the infraction proceedings the Commission has helpfully clarified that it accepts that autonomous workers may nevertheless perform some work that is measured provided that the nature of their activity as a whole is such that they decide themselves on the organisation of their working time. In light of that clarification from the Commission, it has become apparent to the Government that regulation 20(2) is not necessary for the proper implementation of the Working Time Directive and can be deleted. The Social Partners have been informed about this technical amendment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument given that this is a technical amendment. The European Commission have confirmed that, as we originally believed, Regulation 20(2) is not in fact necessary to the proper implementation of Article 17(1) and it was only introduced to respond to questions and queries about the practical application of the original Regulation 20. There is evidence that this part of the regulations is very little used and that people find Regulation 20(2) particularly confusing rather than helpful. Consequently the amendment has only marginal, if any, impact on business.

8.2 The Government will review the guidance it provides on this issue in advance of the removal of regulation 20(2).

9. Contact

9.1 Karen Wilshaw at the Department of Trade and Industry (telephone: 020 7 215 2849) (email: Karen.Wilshaw@dti.gsi.gov.uk) can answer queries about this instrument.