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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends the National Minimum Wage (Offshore Employment) Order 1999 (“the 1999 Order”).

The 1999 Order extends the National Minimum Wage Act 1998 (“the Act”) to individuals in “offshore employment” who are working, or who ordinarily work, in the territorial waters of the United Kingdom or in the United Kingdom sector of the continental shelf. “Offshore employment” is defined in section 42 of the Act as employment for the purposes of activities—

- (a) in the territorial waters of the United Kingdom, or
- (b) connected with the exploration of the sea-bed or subsoil, or the exploitation of their natural resources, in the United Kingdom sector of the continental shelf, or
- (c) connected with the exploration or exploitation, in a foreign sector of the continental shelf, of a cross-boundary petroleum field.

Article 2(2) of the 1999 Order provides that this extension of the Act has no application to employment in connection with a ship which is in the course of navigation or is engaged in dredging or fishing. Article 2 of this Order amends article 2 of the 1999 Order to narrow the scope of that exception. New article 2(2) provides instead that the extension of the Act does not apply to individuals employed for the purposes of activities on a ship exercising the right of innocent passage or the right of transit passage. New article 2(3) provides that the expressions “right of innocent passage” and “right of transit passage” are to be construed in accordance with the United Nations Convention on the Law of the Sea 1982 (“UNCLOS”) (see Section 3 of Part II and Section 2 of Part III of UNCLOS). Although one effect of the amendment is to extend the Act to individuals employed for the purposes of activities on fishing vessels in the territorial waters of the United Kingdom, that is subject to section 43 of the Act which provides that the Act does not apply to share fishermen (within the meaning of that section).

Article 2(3) of this Order inserts new paragraph (5) in article 2 of the 1999 Order. This makes clear that the extension of the Act by the 1999 Order does not affect the operation of section 40 of the Act. Section 40 treats an individual employed on board a ship registered in the United Kingdom as an individual who ordinarily works in the United Kingdom (and to whom the Act therefore applies, by virtue of section 1(2)) unless the employment is wholly outside the United Kingdom or the individual is not ordinarily resident in the United Kingdom.

A full impact assessment has not been produced for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.