

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT RIGHTS ACT 1996 (ITEMISED PAY STATEMENT)
(AMENDMENT) ORDER 2018

2018 No. 147

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 The Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 increases transparency over whether employees are paid correctly and seeks to address underpayment. This includes underpayment of the National Minimum Wage and National Living Wage (NMW/NLW) and contractual underpayment, where the amount paid is less than that agreed in an employee's contract. The Order does this by requiring employers to provide additional information regarding the number of hours that are being paid for within the itemised pay statement (or "payslip") of "time paid" employees i.e. those employees for whom pay varies by reference to hours worked. The aim is to help employees identify at the point of reading a payslip whether the number of hours their employer has paid them for is commensurate with their own understanding of the number of hours they have worked in the same period. The measure is intended to empower employees to challenge their employer if they think there has been an underpayment. Alternatively, the employee may raise a case with ACAS (The Advisory, Conciliation and Arbitration Service) or, if they believe there has been underpayment of the NMW, with HMRC. Without this evidence, it may be more difficult for the employee to challenge the employer or raise their case.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 The territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 This Order is being introduced in response to a recommendation made in the Low Pay Commission's Spring 2016 report: "*We recommend that the Government reviews the current obligations on employers regarding provision of payslips and considers introducing a requirement that payslips of hourly paid staff clearly state the hours they are being paid for*".
- 4.2 The Order is made under section 10 of the Employment Rights Act 1996 and amends section 8 of that Act, the effect of which is to require employers to include the number of hours employees are being paid for on their payslips, where pay varies by reference to time worked. At present, section 8 requires an employer to include information in

an employee's payslip on their gross amount of wages or salary, deductions from that gross amount, and the net amount of wages or salary received. Section 10 allows the Secretary of State, among other things, to add items to the particulars which must be included in a payslip provided under section 8 of that Act. The power under section 10 has not previously been exercised.

- 4.3 The Order will be laid in Parliament simultaneously with the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) (No. 2) Order 2018, which will extend the right to receive a payslip to all workers. Both Orders are intended to come into force at the same time in April 2019. The Orders implement different aspects of the same policy and, consequently, as all workers will be entitled to receive a payslip, time-paid workers will by extension receive the number of hours they are being paid for in their payslip. However, the Orders are not inter-conditional and one Order can come into force even if the other one does not.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales and Scotland.
- 5.2 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

- 6.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding human rights:

“In my view the provisions of the Employment Rights Act 1996 (Itemised Pay Statement) (Amendment) Order 2018 is compatible with the Convention rights.”

7. Policy background

- 7.1 The Employment Rights Act 1996 sets out the employment rights of workers and employees, including the right of employees to receive a payslip. We estimate that up to 1.6 million time-paid employees do not receive payslips citing the number of hours they are being paid for. They will now have a statutory right to receive this information when this Order comes into force.
- 7.2 By providing employees with greater transparency over how much they are being paid, this Order will help employees ensure they are being paid correctly and thus contribute to the Government's objectives to reduce the rate of underpayment.
- 7.3 The Order will support the recommendations made by the report on 'Good work: the Taylor review of modern working practices'. The review was submitted to the Government in July 2017 and contains a series of recommendations for improving employee and worker rights in UK labour law. The Order supports recommendations made concerning increasing transparency over employment rights to help ensure their enforcement. The Order is also part of a broader range of measures the Government has already adopted to strengthen NMW / NLW enforcement, such as heightening penalties for non-compliance and increasing the budget allocated to enforcement.

8. Consultation outcome

- 8.1 An informal consultation was undertaken over 2017 with a range of stakeholders aimed at assessing the impact of different policy options for improving the provision and quality of payslips. Those consulted were the main representative bodies of private sector employers (both large and small); employers from the different parts of

the public sector; the main trade unions who represent a large number of workers; representatives of in-house HR and payroll services; and third party payroll and software providers. Surveys were also undertaken to consult a large number of stakeholders on the different policy options under consideration. These included two surveys which covered employers, HR/ payroll staff and third party payroll providers. Another survey was carried out with workers / employees.

- 8.2 In summary, we found that employer representatives were supportive of the Low Pay Commission's recommendation in principle. They saw it as part of good employment practice. Many employers felt the requirement to provide additional information on a payslip would not be a significant burden given some employers already require information on hours worked in order to pay staff correctly.
- 8.3 Trade unions supported the recommendation and thought it would boost transparency and empower employees to challenge their employers if they disagreed with the number of hours recorded on their payslip.
- 8.4 We discussed additional options which involved a broader scope of changes to the regulations; for example, requiring hours to be disaggregated according to different rates or requiring employers to include the number of hours worked for the purpose of calculating the minimum that must be paid to comply with NMW legislation. Employers told us that under these additional options implementation costs would rapidly begin to escalate because these additional requirements would represent a departure from current practice for the majority of businesses. However, some trade unions advocated increasing the scope of the regulations in this way.

9. Guidance

- 9.1 Employers, employees and workers will be made aware of the requirements of these regulations through provision of guidance on the GOV.UK website. The Government will also engage with employers and payroll providers directly, and with ACAS in preparation for workers contacting the organisation.

10. Impact

- 10.1 The Order will affect employers who will be required to increase the provision of information contained in their staff's payslips. We estimate 1.6 million time-paid employees, across both the private and public sectors, do not receive a payslip with information on the hours they are being paid for. They will benefit once this Order comes into force.
- 10.2 For private sector employers the total one-off implementation cost for stating the number of hours time-paid employees' and workers' are being paid for on their payslips is estimated at £22.1 million, and the ongoing costs are estimated at £2 million per annum. For public sector employers, the total one-off implementation cost for providing the same information is estimated at £0.1 million and the ongoing costs are estimated at £0.4 million per annum.
- 10.3 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.

- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken includes, but is not limited to:
- Consulting representatives of small businesses on developing the policy so that the needs of small businesses are accounted for (please see the ‘Small and Micro Business Assessment’ on page 20 of the Impact Assessment for further details);
 - Bringing the Order into force in April 2019 so that firms have time to adapt their internal systems/ processes to meet the legislation’s requirements;
 - Including guidance on GOV.UK and engaging with stakeholders to support businesses to implement the legislation’s requirements; and
 - Amending the list of HMRC-recognised payroll providers on GOV.UK or producing a similar list, to include and highlight which payroll providers have the facility to produce payslips for free for small businesses.

12. Monitoring & review

- 12.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement:

“Having had regard to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 and the Statutory Review Guidance for Departments published under section 31(3) of that Act, I have decided that it is not appropriate to make provision for review in this instrument. The instrument is concerned solely with the amendment of primary legislation and as such fall outside the scope of the government’s policy objectives regarding provision for review”.

13. Contact

- 13.1 Amrita Rose at the Department for Business, Energy and Industrial Strategy.
Telephone: 020 7215 0733 or email: amrita.rose@beis.gov.uk for any queries regarding the instruments.