

**EXPLANATORY MEMORANDUM TO**  
**THE APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009**  
**(CONSEQUENTIAL AMENDMENTS TO SUBORDINATE LEGISLATION) (ENGLAND**  
**AND WALES) ORDER 2012**

**2012 No. 3112**

**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.

**2. Purpose of the instrument**

2.1 This Order makes consequential amendments to secondary legislation, relating to Part 1 of the Apprenticeships, Skills, Children and Learning Act 2009 (“the Act”) which provides for a statutory framework for apprentices.

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

3.1 None.

**4. Legislative Context**

4.1 The Act introduced a new statutory framework for apprenticeships. This Order makes consequential amendments to the National Minimum Wage Regulations 1999 (SI 1999/584) (“the NMW Regulations”) so that a worker who is working under an apprenticeship agreement within the meaning of section 32 of the Act is entitled to the same national minimum wage (“NMW”) rate as someone employed under a contract of apprenticeship.

4.2 This Order also amends the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) (“the FTE Regulations”) so that those Regulations do not apply to employees working under an apprenticeship agreement within the meaning of section 32 of the Act.

**5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

**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 Part 1 of the Act created a new statutory framework for apprenticeships, including provision for apprenticeship frameworks, completion conditions, apprenticeship agreements (section 32) and the issue of certificates. The purpose of apprenticeship agreements is to ensure parity for apprentices participating in the Government-funded statutory apprenticeships introduced by the Act, with other employees and remove potential deterrents to employers to recruit apprentices; apprenticeship agreements have no bearing on apprenticeship pay, and were not intended to do so.

7.2 Separately in 2010, in line with the recommendations of the Low Pay Commission, the Government decided to remove the exemptions from the NMW that existed for certain apprentices (that is, those either aged under 19 or aged 19 and over and in the first year of their apprenticeship) and bring these apprentices within the NMW framework. A separate minimum wage rate for these apprentices was introduced in October 2010. However the 2010 amendments to the NMW Regulations did not refer to apprenticeship agreements because the part of the Act introducing these did not come into force until April 2011. It is that modification that this Order introduces.

7.3 Regulation 20 of the FTE Regulations provides that these do not apply to contracts of apprenticeship. However it did not refer to Apprenticeship Agreements under the 2009 Act because the FTE Regulations pre-date the Act. Accordingly, we are making the necessary modification to the FTE Regulations through this Order to ensure apprentices are excluded as intended.

## **8. Consultation outcome**

8.1 No consultation was necessary, since the amendments set out in this Order are consequential and do not change policy on, or implementation of, apprenticeships, the NMW or fixed-term employment.

## **9. Guidance**

9.1 It is not necessary to issue guidance as the amendments set out in this Order are consequential and do not change policy on, or implementation of, apprenticeships, the NMW or fixed term employment. Existing guidance on these matters will be amended, as necessary.

## **10. Impact**

10.1 The amendments set out in this Order are consequential and there is therefore no need to produce an impact assessment for this Order.

## **11. Regulating small business**

11.1 The amendments set out in this Order are consequential and do not change policy on, or implementation of, apprenticeships, the NMW or fixed term employment. This Order therefore has little impact on small business.

## **12. Monitoring & review**

12.1 The amendments set out in this Order are consequential and there is therefore no need for monitoring and review of the Order. The impact of the NMW, including its application to apprentices, is reviewed annually by the Low Pay Commission.

## **13. Contact**

13.1 Kate McGimpsey at the Department for Education ([kate.mcgimpsey@education.gsi.gov.uk](mailto:kate.mcgimpsey@education.gsi.gov.uk)) on 0114 207 5189 can answer queries regarding this instrument.