EXPLANATORY MEMORANDUM TO

THE UNFAIR DISMISSAL AND STATEMENT OF REASONS FOR DISMISSAL (VARIATION OF QUALIFYING PERIOD) ORDER 2012

2012 No. [XXXX]

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 From 6 April 2012, this Order increases the minimum qualifying period for the right to claim unfair dismissal from one year to two years for employees starting new employment on or after the commencement of the Order.

2.2 In addition, this Order increases the minimum qualifying period for the right to request a written statement of reasons for dismissal from one year to two years for employees starting new employment on or after the commencement of the Order.

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

3.1 None

4. Legislative Context

4.1 An employee's right not to be unfairly dismissed by their employer is an established part of the employment law of this country. It was introduced into English law by the Industrial Relations Act 1971, and is now to be found in section 94 of the Employment Rights Act 1996. But this right does not apply to every unfair dismissal. In order to qualify for protection an employee must have been working for their employer for a prescribed minimum period.

4.2 The length of the qualifying period has been changed several times. Initially the period was two years, then it became six months, then one year. The period was changed again in October 1980. Under the Employment Act 1980 the period was lengthened from one year to two years in cases of employers employing fewer than twenty employees. On 1 June 1985 the position changed again, by virtue of the Unfair Dismissal (Variation of Qualifying Period) Order 1985 (S. I. 1985 No. 782). The effect of this Order was to extend the qualifying period to two years continuous employment in all cases. On 1 June 1999 the Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 1999 No. 1436 reduced the period to one year.

4.3 In ‘Resolving Workplace Disputes: Government Response to Consultation’ the Government confirmed that it would increase the qualifying period for the right to claim

unfair dismissal from one year to two years. This Order amends the Employment Relations Act 1996 to that effect.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Employment Relations, Consumer and Postal Affairs has made the following statement regarding Human Rights:

In my view the provisions of The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying period) Order 2012 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 The Resolving Workplace Disputes consultation had two key aims: first, to encourage the earlier resolution of disputes and reduce the number of claims reaching employment tribunal; second, to help businesses feel more confident about hiring people. As set out in the Government's response to consultation and accompanying impact assessment, extending the qualifying period for the right to claim unfair dismissal to two years contributes to both these aims. The Government considers that the qualifying period for the right to request a written statement of reasons for dismissal should be in line with that for the right to claim unfair dismissal.

8. Consultation outcome

8.1 The Government published 'Resolving workplace disputes: A consultation' on 27 January 2011 and the consultation closed on 20 April 2011. The Government response was issued on 23 November 2011.

8.2 Over 400 responses to the consultation were received; about 25% from individuals, about 33% from businesses and their representative organisations, and the remainder from trade unions, Government agencies, charities, legal representatives and others. The majority of businesses and business groups who responded welcomed the proposed increase in the unfair dismissal qualifying period, but overall the majority of consultation respondents disagreed with the proposal.

9. Guidance

9.1 Any reference to the qualifying period for claims for unfair dismissal will be updated. This includes electronic and other media such as Businesslink.gov.uk and Direct.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is a net average annual benefit of £4.7m.

10.2 The impact on the public sector is a net average annual benefit of £2-3m.

10.3 An Impact Assessment has been prepared for this instrument and is available on the BIS website - http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-1381-resolving-workplace-disputes-final-impact-assessment.pdf.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is not to exempt them from the legislation. This is because the legislation has net benefits for business.

11.3 The basis for the final decision on what action to take to assist small business is set out in the Impact Assessment. On balance, as the benefits to employers outweigh the one-off transitional costs, the Government believes that all businesses should be covered by the extension of the qualifying period for the right to claim unfair dismissal and the right to request a written statement of reasons for dismissal. Furthermore, small businesses are often started by new entrepreneurs who may be less knowledgeable and confident about employing people and the Government therefore believes that extending the qualifying period is particularly important in encouraging small businesses to recruit new employees.

12. Monitoring & review

12.1 The Government intends to undertake a post implementation review in 2016.

13. Contact

David Dugmore at the Department for Business, Innovation and Skills Tel: 0121 698 4048 or email: david.dugmore@bis.gsi.gov.uk can answer any queries regarding the instrument.