EXPLANATORY MEMORANDUM TO

THE REPORTING OF INJURIES, DISEASES AND DANGEROUS OCCURRENCES (AMENDMENT) REGULATIONS 2012

2012 No. 199

1. This explanatory memorandum has been prepared by the Health and Safety Executive and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) to increase the period of incapacitation from over three days to over seven days, before the occupational injury or accident, which led to the incapacitation, is required to be reported to the enforcing authority.

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

3.1 None

4. Legislative Context

4.1 In 2010, the Prime Minister asked Lord Young of Grafham to review the operation of health and safety laws and the growth of the compensation culture. Lord Young recommended in his report, "Common Sense, Common Safety" and the Prime Minister accepted, amending regulation 3(2) of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR.). Regulation 3(2) requires the responsible person under the regulations, usually the employer, to report injuries to people at work who have been incapacitated for more than three consecutive days. "Incapacitation" means that the injured person is absent from work or unable to carry out the range of duties they would normally be expected to do. The proposal increases this threshold to over seven consecutive days.

4.2 Council Directive 89/391/EEC provides the general framework of EU legislation concerning measures to encourage the improvement of the health and safety of workers. Article 9(1)(c) of the Directive provides that an employer shall keep a list of occupational accidents resulting in a worker being unfit for work for more than three working days. Regulation 7(1)(a) of RIDDOR currently implements Article 9(1)(c) of the Directive, as it provides that a responsible person shall keep a record of any event which is required to be reported under regulation 3 of RIDDOR (this includes injuries and accidents which led to over three days of incapacitation). As the statutory instrument will increase the period of incapacitation from over three days to over seven days, the statutory instrument amends RIDDOR to maintain the legal requirement for employers and others to keep a record of occupational injuries or accidents resulting in over three days of incapacitation. This instrument also specifies

the particulars to be kept in records of such injuries and requires the record to be kept for three years.

4.3 As the statutory instrument extends the period from over three days to over seven before a report is sent to the enforcing authority, it also amends the time period for submitting the report from "within ten days" of the accident to "within 15 days "; otherwise, an employer or other person would only have three days to meet the requirement.

4.4 The instrument makes consequential amendments to the Safety Representatives and Safety Committee Regulations 1977 as it maintains existing rights of safety representatives, by continuing to allow the inspection of the part of the work place where an occupational injury leading to over three days of incapacitation occurred. Similarly, consequential amendments are made to the Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989 which allow safety representatives to continue to inspect installations and equipment connected to such injuries.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain and extends to premises and activities **specified** in the Health and Safety at Work etc Act 1974 (Application Outside Great Britain) Order 2001.

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

• ***What is being done and why***

7.1 In June 2010, the Prime Minister appointed Lord Young to conduct a review of the operation of health and safety laws and growth of the compensation culture. On 15th October 2010, Lord Young published his report and recommended that the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) be amended by extending the period from over three days to over seven days, before an occupational injury or accident needs to be reported to the enforcing authority. The increased period coincides with the point when an employee who is absent from work due to ill health or injury must obtain a "fit note" from their doctor. Further to a public consultation on this proposal, which resulted in a 2:1 majority in favour of the recommendation, the Minister agreed to adopt the amendment.

7.2 It is envisaged that the amendment to RIDDOR will improve the effectiveness of the workplace accident report system by simplifying the requirements, as it brings the reporting requirement into line with that of the "fit note". Thus, it will make sickness absence easier to manage, as well as reducing the overall number of reports that must be made, which. Through this it will also reduce unnecessary burdens on business and reduce the number of reports that regulators must process..

7.3 Currently, the Health and Safety Executive only investigates around 0.8% of all reported injuries and accidents which lead to a worker being incapacitated for over three-day . While such information about these and other, minor injuries that do not have to be reported is relevant in assessing the control of health and safety risks, formally reporting these types of injuries is not key to the effective regulation of occupational health and safety. The change will not compromise the Health and Safety Executive's ability to target its work. The duty on employers and other responsible persons to record over three day injuries remains.

7.44 This change will focus legal duties where they are most needed and with a system that is proportionate and not bureaucratic.

7.5 Professor Lofstedt recommended in his independent review of health and safety legislation that the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and its associated guidance be amended by the end of 2013 to provide more clarity for businesses. The Government accepted this recommendation, and intends to complete this introducing a simpler accident reporting system with new regulations by October 2013.

• ***Consolidation***

7.6 All of the amendments in this Statutory Instrument (SI) will come into force on the 6th April 2012. The 4th Edition of the Guide to the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) contains information concerning the consequential amendments and makes reference to the changes implemented by this SI. The guidance is available for purchase and free download on the HSE website here http://www.hse.gov.uk/pubns/books/l73.htm .

8. Consultation outcome

8.1 A 12-week public consultation took place between January and May 2011. 776 responses were received from consultees with a 2:1 majority in favour of the regulations being amended. In addition, a majority of the respondents felt that the change would not adversely impact upon national statistics.

8.2 Respondents included industry representatives (42%), national government and other non-departmental and governmental organisations (8%), local government (12%), trade associations (4%), trades unions (3.5%), charities (3%), academics (3.5%), consultancies (7.5%), members of the public (0.5%), pressure groups (0.5%) and others. These comprised health and safety professionals (80%), employers (12%), employees (5%), trades union officials (1%), training providers (2%).

8.3 The key themes and issues identified amongst the respondents' replies who supported the proposal included that: administrative burdens would be reduced, the alignment with the "fit note" requirement would make sickness absence easier to manage and aid rehabilitation, as well the requirement for a medical examination would have a positive impact on the claims culture, the quality of data would also be improved and the reporting requirements would focus on more serious injuries.

8.4 Amongst the concerns of those who opposed the proposal were that: the reduction in the number of reports would reduce the regulators' opportunity to spot incidents that could have been more serious, the extension would delay the regulator becoming aware of incidents and thus investigating, that injured employees would be pressurised to return to work early to avoid reporting and absence times would increase in order that an incident was reported.

8.5 In addition, respondents identified as key issues, maintaining the existing rights of employee safety representatives and extending the deadline by which the report must be made from 10 to 15 days. These were taken into account by the HSE Board before it made its recommendation to the Minister to amend the legislation. A summary of the outcome of the consultation can be viewed at http://www.hse.gov.uk/aboutus/meetings/hseboard/2011/170811/paugb1150a.pdf

9. Guidance

9.1 Guidance was published 12 weeks prior to the instrument coming into force on 6 April 2012. This is publically available and free to down load from the HSE website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is a net benefit to business of £2.1 million**s** over a ten-year equivalent period through a reduction of 28% in the number of reports concerning occupational injuries leading to over three days of incapacitation that must be made by employers and other persons with responsibilities under the regulations.

10.2 The impact on the public sector is a net saving to central and local government of £2.9 millions over the same ten-year period.

10.3 An Impact Assessment is attached to this memorandum at Annex 1 and will be published alongside the Explanatory Memorandum on the OPSI website.

11. Regulating small business

11.1 The legislation is deregulatory and therefore applies to small business to allow them to benefit from the reduced regulatory burden.

12. Monitoring & review

12.1 A review clause is included in the statutory instrument.

13. Contact

Ron Griffiths at the Health and Safety Executive (HSE) Tel: 0151 951 3599 or email: ron.griffiths@hse.gsi.gov.uk can answer any queries regarding the instrument.