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HEALTH AND SAFETY COMMISSION

Employees' Civil Liabilities: Proposals to amend the Management of Health and Safety at Work Regulations 1999 and the Health and Safety (Consultation with Employees) Regulations 1996

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Issue

1. The development of proposals for regulations (*Management of Health and Safety at Work and Health and Safety (Consultation with Employees)(Amendment) Regulations 2005*) to amend:
 - the Management of Health and Safety at Work Regulations 1999 (MHSWR); and
 - the Health and Safety (Consultation with Employees) Regulations 1996.

Timing

2. We want to issue the consultation letter in February.

Recommendation

3. The Commission is invited to agree to the publication of the attached Consultative Letter (attached at Appendix with draft Regulations and the Regulatory Impact Assessment).

Background

4. At its meeting on 7 December 2004 (HSC/04/131) the Commission agreed to the development of proposals for regulations to address concerns expressed by stakeholders including Public Concern at Work and the TUC about employees' civil liabilities resulting from the 2003 amendment to the Management of Health and Safety at Work Regulations 1999 and in particular the potential liability of employees to third parties for damages arising from a breach of their duties under those Regulations resulting in injury or ill health.
5. The detailed background to the issue can be found in the draft Consultative Letter at Appendix 1 and in HSC/04/131. But in summary we think the current Regulations do not give the effect the Commission wanted and need to be amended.

6. As informed during the presentation of HSC/04/131 on 7 December 2004 there remains a civil liability exclusion for breaches of duties by employers in the Health and Safety (Consultation with Employees) Regulations 1996. It is proposed, therefore, that the opportunity is taken to remove the civil liabilities exclusion contained in these regulations.

Argument

7. Again, the argument for these proposals is addressed in the draft Consultative Letter at Appendix 1 and HSC/04/131.

8. At its meeting of 7 December 2004, the Commission noted HSE's intention to prepare the Consultative proposals at Appendix A together with the following timetable:

- HSC consideration of results of consultation and draft regulations in June 2005; and, subject to the Commission's agreement at that time,
- consideration by Ministers before the Summer recess.

Consultation

9. The Commission has agreed to a consultation period of twelve weeks. The Consultative Letter will be sent to the 123 organisations and individuals who commented on the 2003 amending Regulations and other key stakeholders. Other Government Departments, including DWP, ODPM, and devolved administrations will be involved closely in taking the latest proposed Amending Regulations forward. We will keep Public Concern at Work and other stakeholders informed of progress.

Presentation

10. As previously informed, there has been stakeholder and Press interest in the matters raised concerning the liability of employees to actions for damages by third parties for breach of MHSW. HSE is in the process of providing updated advice on the liabilities arising from the 2003 Regulations and alerting stakeholders to the proposed regulatory changes that we are proposing to consult on.

Costs and Benefits

11. The regulations do not impact directly upon health and safety issues; there are no tangible benefits resulting from the regulations. The costs of the regulations are very small as expert opinion asserts that there would not be a significant number of additional cases arising from these regulations. Further information concerning costs and benefits is to be found in the Regulatory Impact Assessment.

Financial/Resource Implications for HSE

12. Resources to take forward the amending regulations have been identified and reallocated from within Policy Programme.

Action

13. The Commission is invited to agree to the publication of the attached Consultative Letter including draft Regulations and Regulatory Impact Assessment (see Appendix).