

EXPLANATORY MEMORANDUM TO
THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS)
(AMENDMENT) ORDER (NORTHERN IRELAND) 2012

S.R. 2012 No. 283

1. Introduction

- 1.1. This Explanatory Memorandum has been prepared by the Department for Employment and Learning to accompany the statutory rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The statutory rule is made under powers conferred by Article 67F of the Employment Rights (Northern Ireland) Order 1996 and is subject to the negative resolution procedure before the Assembly.

2. Purpose

- 2.1. This statutory rule amends the Schedule to the Public Interest Disclosure (Prescribed Persons) (Amendment) Order (Northern Ireland) 1999 (“the 1999 Order”), which was last updated by S.R.s 2010 No. 361 and No. 399.

3. Background

- 3.1. The Public Interest Disclosure (Prescribed Persons) Order (Northern Ireland) 1998 gives protection to “whistleblowers” who raise concerns by making a protected disclosure about dangerous or illegal activity that they are aware of in the workplace. Such protection is provided against any consequent victimisation or dismissal, and is contingent on the whistleblower having acted in a responsible way in dealing with his/her concerns. Disclosures are protected if made to a person or body which has been prescribed by the 1999 Order. The list of Prescribed Persons/Bodies and the description of matters for which they are listed has recently been reviewed and updated.

4. Addition of new prescribed persons and description of subject matters

- 4.1. The Office of Qualifications and Examinations Regulation (OFQUAL) has been added as a prescribed person, for matters relating to its functions under the Apprenticeships, Skills, Children and Learning Act 2009.
- 4.2. The Secretary of State for Business, Innovation and Skills has been added as a prescribed person, for matters relating to insider dealing or fraud and other misconduct, in relation to companies, investment business, insurance business, or multi-level marketing schemes (and similar trading schemes).

5. Amendment of description of subject matters for prescribed persons previously listed in Schedule 1 to the 1999 Order

- 5.1** The Pensions Regulator was previously prescribed for matters relating to occupational and work based personal pension schemes. This has been clarified to state that this includes matters relating to occupational pension schemes and other private pension arrangements including matters relating to the Pensions Regulator's objective of maximising compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions (No.2) Act (Northern Ireland) 2008 (c.13 (N.I.)).
- 5.2** The Office of Communications was previously prescribed for matters relating to the provision of electronic communications networks and services and the use of the electromagnetic spectrum; broadcasting and the provision of television and radio services; media ownership and control; and competition in communications markets. Postal services regulation has been added.
- 5.3** The Department of Enterprise, Trade and Investment was previously prescribed for matters relating to compliance with the requirements of consumer protection and fair trading legislation. A further matter has been added, namely fraud or misconduct involving companies which are in compulsory liquidation, creditors' voluntary liquidation, administration or administrative receivership.
- 5.4** The Department of Agriculture and Rural Development was previously prescribed for matters relating to acts or omissions which have an actual or potential effect on the flows in watercourses or on drainage of land; and acts or omissions which have an adverse or potentially adverse effect on fish in the sea and fish health. Two new matters have been added, namely acts or omissions which have an adverse or potentially adverse effect on forests; and acts or omissions which could breach or potentially breach the Northern Ireland Cross-Compliance verifiable standards.
- 5.5** The Department of Culture, Arts and Leisure was previously prescribed for matters relating to acts or omissions which have an adverse or potentially adverse effect on inland fisheries or on migratory salmon or trout. It will now be prescribed also in relation to matters adversely affecting migratory eels.
- 5.6** The Regulation and Quality Improvement Authority was previously prescribed for matters relating to the standard of health and social care provided by both statutory and independent providers. This description has been amended to matters relating to the quality, safety and availability of health and social care services provided by statutory, independent, community and voluntary providers in Northern Ireland.

5.7 The Office of Fair Trading (OFT) was previously prescribed for the regulation of the UK consumer credit market through a licensing system, and the application of consumer protection legislation where matters adversely affect the collective interests of UK consumers; and the enforcement of UK competition law. This description has been amended to matters relating to the OFT's functions under the Enterprise Act 2002, and additionally under other legislation relating to consumer protection and fair trading, including particularly the Consumer Credit Act 1974; other legislation relating to competition, including particularly the Competition Act 1998, and Articles 101 and 102 of the Treaty on the Functioning of the European Union; other legislation relating to the investigation of markets, including particularly the Financial Services and Markets Act 2000; and legislation relating to money laundering and terrorist financing, including particularly the Money Laundering Regulations 2007.

5.8 The Financial Reporting Council Limited and its operating bodies: the Professional Oversight Board; the Financial Reporting Review Panel; and the Accountancy and Actuarial Discipline Board is now renamed as The Financial Reporting Council Limited and its Conduct Committee. It was previously prescribed for matters relating to the independent oversight of the regulation of the accountancy, auditing and actuarial professions; the independent supervision of Auditors General (as defined in section 1226 of the Companies Act 2006; the monitoring of major audits (as defined in section 525 of that Act for the purposes of that section or section 522, or paragraph 13(10) of Schedule 10 to that Act for the purposes of that paragraph); the registration of third country auditors (as defined in section 1261 of that Act); compliance with the requirements of legislation relating to accounting and reporting; the investigation of the conduct of auditors, accountants and actuaries and the holding of disciplinary hearings in public interest cases (as defined in paragraph 24 of Schedule 10 to that Act). The determination of sanctions against auditors (as defined in paragraph 23 of Schedule 10 to that Act) has been added.

6. Consultation

6.1. A formal, public consultation was not considered necessary, as the Order simply reviews and updates existing legislation, to take account of recently established or abolished organisations. However, all of the persons / bodies listed on the Order were individually contacted to agree their inclusion in the Order and to confirm that the details held were accurate.

7. Equality Impact

7.1. An Equality Impact Assessment is not necessary as there is no impact, direct or indirect, on any of the Section 75 groups.

8. Regulatory Impact

8.1. A Regulatory Impact Assessment has not been prepared for this Order as it has no impact on business, charities or voluntary bodies.

9. Financial Implications

9.1. There are no financial implications.

10. Section 24 of the Northern Ireland Act 1998

10.1. This legislation complies with Section 24 of the Northern Ireland Act 1998 (Community Law, Convention Rights etc.).

11. EU Implications

11.1. Not applicable.

12. Parity or Replicatory Measure

12.1. The Order applies to Northern Ireland only. The corresponding Great Britain Statutory Instrument is The Public Interest Disclosure (Prescribed Persons) Order 1999.

13. Additional Information

13.1. Not applicable.