

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS)**  
**(AMENDMENT) ORDER 2008**

**2008 No. 531**

**1.** This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 1999 (S.I. 1999/1549) (“the 1999 Order”) contains a schedule which lists prescribed persons or descriptions of prescribed persons (prescribed persons) and describes the matters for which those persons are prescribed. A qualifying disclosure made to a prescribed person in relation to a matter for which that person is prescribed will be a protected disclosure (subject to the satisfaction of certain additional conditions). Where workers make such a disclosure, they will benefit from the statutory protection against detrimental treatment by their employers for making such a disclosure. The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2008 (“the Order”) amends the Schedule to the 1999 Order, making two additions to the list of prescribed persons. The present Order adds the Children’s Commissioner and the Commissioner for Children and Young People in Scotland.

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

3.1 None.

**4. Legislative Background**

4.1 The Public Interest Disclosure Act 1998 (c.23) made amendments to the Employment Rights Act 1996 (c.18) (“the 1996 Act”) to provide employment protection for workers who make certain disclosures of information. The 1996 Act defines the categories of disclosures which qualify for protection and the circumstances in which such disclosures will be protected. In particular, under section 43F of the 1996 Act, a qualifying disclosure is a protected disclosure where, subject to certain requirements, the worker makes the disclosure to a person prescribed by an order made by the Secretary of State for the purpose of receiving disclosures about the matters concerned.

4.2 Under section 43F of the 1996 Act the Secretary of State may make an order prescribing persons for the purposes of that section. Any such order may specify persons or descriptions of persons and must specify the descriptions of matters in respect of which each person or persons, or persons of each description, is or are prescribed. The 1999 Order was made pursuant to section 43F. It includes a Schedule of prescribed persons and descriptions of persons and descriptions of the matters for which they are prescribed. The 1999 Order was substantially amended in 2003, by the

substitution of a new Schedule, to take account of changes (both legislative and policy) which impacted both on the prescribed persons and descriptions of persons and the descriptions of matters. Further amendments were made in 2004 and 2005. This Order makes two additions to the Schedule.

## **5. Extent**

5.1 This instrument applies to Great Britain.

## **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 The 1996 Act provides employment protection for workers who ‘blow the whistle’ on wrongdoing in the workplace, provided they do so in a responsible way. While the legislation is designed to encourage internal disclosure, to the employer or via procedures authorised by the employer, disclosures beyond the workplace can also attract protection. They include disclosures to a person prescribed by an Order made by the Secretary of State. A worker will be protected where the disclosure is made to a prescribed person in accordance with the requirements of the 1996 Act.

7.2 A number of persons or descriptions of persons were prescribed when the legislation first came into force and additions have since been made. The Order adds the Children’s Commissioner and the Commissioner for Children and Young People in Scotland.

7.3 No formal consultation has been undertaken but interested government departments have been consulted.

## **8. Impact**

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

8.2 The impact on the public sector is limited to the extent to which regulatory bodies may receive disclosures of information from workers who might not have made them had those bodies not been prescribed persons.

## **9. Contact**

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