

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT)**  
**ORDER 2015**

**2015 No. 1407**

**1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order amends the list of prescribed persons in the Public Interest Disclosure (Prescribed Persons) Order 2014 (“the 2014 Order”). Workers can benefit from employment protection if they blow the whistle by making a disclosure to a prescribed person.

2.2 This Order makes the Secretary of State for Education a prescribed person in respect of matters relating to the following educational institutions in England:

- Maintained schools
- Maintained nursery schools
- Independent schools (including academies and free schools)
- Non-maintained special schools
- Pupil referral units
- Alternative provision academies
- 16-19 Academies (and free schools)
- Sixth form colleges
- Special post-16 institutions

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

3.1 None

**4. Legislative Context**

4.1 Part IVA of the Employment Rights Act 1996 (“the 1996 Act”) provides employment protection for workers who make certain disclosures of information.

4.2 The 1996 Act defines the categories of disclosure which qualify for protection (“qualifying disclosures”, which include public interest disclosures about criminal offences and endangering an individual’s health and safety, for example) and the circumstances in which such disclosures will be protected. Section 43F of the 1996 Act

provides that a qualifying disclosure is a protected disclosure where, subject to certain requirements, the worker makes the disclosure to a person prescribed.

4.3 The 2014 Order was made pursuant to section 43F and includes a Schedule of prescribed persons and description of matters for which they are prescribed.

4.4 This instrument amends the 2014 Order by adding the Secretary of State for Education to the list of prescribed persons in the Schedule to the 2014 Order. The Secretary of State for Education will be a prescribed person for matters relating to the educational institutions specified in the Order (referred to in paragraph 2.2 above).

## **5. Territorial Extent and Application**

5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 A prescribed person provides workers with a mechanism to make a public interest disclosure to an independent body. A worker will potentially qualify for the same employment rights as if they had made a disclosure to their employer if they report to a prescribed person. If a protected disclosure is made, the worker may have a right to redress through an employment tribunal should they suffer a detriment or be dismissed from work as a result of making that disclosure.

7.2 The Secretary of State for Education is not currently a prescribed person. Certain disclosures to Ministers qualify for protection under section 43E of the 1996 Act and disclosures to anyone, including Ministers, are permitted if the conditions in section 43G of the 1996 Act are met (for example, where a worker has good reason for not making the disclosure to their employer).

7.3 An amendment to the 2014 Order is being made so that qualifying disclosures of information made by workers to the Secretary of State for Education, in respect of matters relating to the specified educational institutions and in accordance with the relevant provisions of the 1996 Act, may be protected under section 43F of the 1996 Act.

7.4 This instrument amends the 2014 Order. The Department for Business, Innovation and Skills aims to consolidate the 2014 Order in October 2015.

## **8. Consultation outcome**

8.1 The change made by this instrument was not consulted on specifically. Associations for school and college leaders were consulted informally. They were content with the proposal to add the Secretary of State as a prescribed person.

## **9. Guidance**

9.1 Stakeholders will be informed that the Secretary of State for Education is a prescribed person for matters relating to the educational institutions specified in the Order, for qualifying disclosures.

## **10. Impact**

10.1 An Impact Assessment has not been produced for this instrument as it has no quantifiable impact on business, charities or voluntary bodies and imposes no new obligations on those bodies. The impact on the public sector is negligible.

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 The instrument does not impose additional burdens on business and therefore there is no need to minimise the impact of the requirement on firms employing up to 20 people.

## **12. Monitoring & review**

12.1 The outcome will be subject to internal review after 12 months and the legislation may be amended accordingly.

## **13. Contact**

Liz Majewska at the Department for Education Tel: 0207 340 7098 or email: [liz.majewska@education.gsi.gov.uk](mailto:liz.majewska@education.gsi.gov.uk) can answer any queries regarding the instrument.