

EXPLANATORY MEMORANDUM TO
THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) ORDER 2014
2014 No. 2418

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order revokes the Public Interest Disclosure (Prescribed Persons) Order 1999 (“the 1999 Order”) and replaces it with a new list of prescribed persons, which includes some persons not previously included in the 1999 Order, omits others and changes the description of matters for which certain persons are prescribed. Workers can benefit from employment protection if they blow the whistle by making a disclosure to a prescribed person.

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

3.1 None.

4. Legislative Context

4.1 Part 4A 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 environmental damage and miscarriages of justice, for example) and the circumstances in which such disclosures will be protected. Section 43F of the Act provides that 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.

4.3 The 1999 Order was made pursuant to section 43F and includes a Schedule of prescribed persons and descriptions of matters for which they are prescribed.

4.4 This instrument revokes the 1999 Order and replaces it with a new list of prescribed persons.

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 This instrument revokes the 1999 Order, which had been extensively amended. The Government Response to the Call for Evidence on the Whistleblowing Framework set out 9 recommendations as a package of measures to support the important role of whistleblowing. This Order implements one of the commitments from the Government Response to update the statutory list of prescribed persons. We have undertaken a major exercise, working with other Government Departments to ensure the list is accurate and up-to-date.

7.2 Prescribed Persons are principally regulators but include other persons and bodies such as Members of Parliament (MPs), which a person may approach outside their workplace to report suspected or known wrong-doing. The current list include 60 regulators, 3 Government Ministers, all Local Authorities (434 principle authorities), all MPs (650), 2 public bodies relating to policing standards, a charity, specifically appointed auditors and the National Assembly for Wales.

8. Consultation outcome

8.1 The Department consulted extensively on whistleblowing in the form of a call for evidence last July to identify whether the legislation required further updating. The Government issued its response to the call for evidence on 25 June 2014. The changes that were announced include: improved guidance on how whistleblowing works for employees; a new best practice guide to whistleblowing policies for employers; reviewing the effectiveness of the current process for referring a case to the appropriate regulator; the introduction of a duty on prescribed persons to report annually on the number of cases they have received and whether these have been investigated; updating the prescribed persons list; giving relevant groups (e.g. student nurses) whistleblowing protections.

This Order implements one of the changes following the publication of the Government Response.

9. Guidance

9.1 The Department will use appropriate communication channels and press avenues to publicise this change.

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 organisations.

10.2 The impact on the public sector is minimal.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 This 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 and review

12.1 The Department will continue to review the list on an annual basis going forward, liaising with other Government Departments to ensure the bodies on the list and the relevant description of matters are correct. At the time of the annual review in 2015, the efficacy of the change made by this instrument will be considered and further amendments may be made.

13. Contact

Bertha Eson-Benjamin at the Department for Business, Innovation and Skills Tel: +44 (0) 20 7215 2350 or email: bertha.eson-benjamin@bis.gsi.gov.uk can answer any queries regarding the instrument.