

**EXPLANATORY MEMORANDUM TO**  
**THE PRESCRIBED PERSONS (REPORTS ON DISCLOSURES OF**  
**INFORMATION) REGULATIONS 2017**

2017 No. [XXXX]

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 This instrument creates an obligation on prescribed persons (as listed in the Schedule to the Public Interest Disclosure (Prescribed Persons) Order 2014), to report annually about the public interest disclosures which it receives from workers. It addresses the problems of a lack of consistency in approach and communication from prescribed persons on the disclosures received by them.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

**4. Legislative Context**

- 4.1 The Public Interest Disclosure (Prescribed Persons) Order 2014 prescribes persons/bodies to be recipients of whistleblowing disclosures for the purposes of part 4A of the Employment Rights Act 1996.
- 4.2 During the passage of the Enterprise and Regulatory Reform Act 2013, the Government committed to run a call for evidence on whistleblowing in order to establish if there was a case to make changes to the existing statutory framework. The responses to the call for evidence included comments on the role of regulators and other bodies who are prescribed as recipients of whistleblowing disclosures for the purposes of Part 4A of the Employment Rights Act 1996. The comments indicated a lack of consistency in the approach taken by these “prescribed persons” and a lack of communication by them.
- 4.3 As a result, section 148 of the Small Business, Enterprise and Employment Act 2015 amended the Employment Rights Act by inserting section 43FA which introduced a power to make regulations requiring prescribed persons to report annually.
- 4.4 These regulations set out the matters to be covered in the report and the manner of publication but do not require the reporting of any detail that would enable the identification of a worker who has made a disclosure or an employer or other person in respect of whom a disclosure has been made.

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

- 5.1 The extent of this instrument is Great Britain.
- 5.2 The territorial application of this instrument is Great Britain.

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

- 6.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

In my view the provisions of The Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 are compatible with the Convention rights.

## **7. Policy background**

### *What is being done and why*

- 7.1 In 2013, BIS found through the call for evidence on whistleblowing that the confidentiality duty that binds prescribed persons and the lack of legal obligation to investigate a disclosure meant that whistleblowers did not have confidence that their reports of wrongdoing were investigated. This was cited as a reason for the whistleblowing framework ‘failing’ to protect whistleblowers.
- 7.2 The lack of consistency in handling disclosures was also causing people to doubt the effectiveness of the whistleblowing framework. To address these concerns, we carried out a consultation from August 2014 to September 2014 to inform proposed regulations to impose a duty on prescribed persons to report on whistleblowing activity. We sought views on the content and process for the report and the Government response to the consultation was published in March 2015.
- 7.3 Following this consultation, the previous coalition government took a power in the SBEE Act 2015 to require Prescribed Persons listed on the Public Interest Disclosure Act (Prescribed Person) Order 2014 to report, about the whistleblowing disclosures they receive. This is to be introduced through secondary legislation.
- 7.4 The intention of this measure is to increase confidence that reports are looked into and to drive up transparency across prescribed persons on how whistleblowing disclosures are handled.

### *Consolidation*

- 7.5 No consolidation is necessary.

## **8. Consultation outcome**

- 8.1 The Government ran a consultation from 1 August to 30 September 2014. The consultation sought views on the practical implication of a legal power contained in the Small Business, Enterprise and Employment Bill to require certain prescribed persons to report annually on public interest disclosures (whistleblowing disclosures) that they receive. The Government received 49 written responses to the consultation of which just under half were from prescribed persons. There was general support for the reporting duty as a means to drive up transparency and consistency, but respondents also challenged the government to ensure that reporting requirements struck a balance

between transparency and confidentiality, including protecting the identities of both the worker and employer.

- 8.2 The Government response to the consultation was published in March 2015.
- 8.3 The Government has taken into consideration the responses to the consultation and further comments received from stakeholders, which echoed those in the initial consultation, and drafted the Regulations to reflect those comments.

## **9. Guidance**

- 9.1 We have updated the current BEIS Prescribed Persons Guidance to include the duty to report and what is required from them as a prescribed person.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The Minister for Small Business, Consumers and Corporate Responsibility does not consider a monitoring and review provision appropriate for this instrument as the costs associated with monitoring the impacts of the regulation and carrying out reviews from time to time outweighs the potential adverse impacts.

## **13. Contact**

- 13.1 Deborah Persaud at the Department for Business, Energy and Industrial Strategy Telephone: 020 7215 1695 or email: [Deborah.Persaud@beis.gov.uk](mailto:Deborah.Persaud@beis.gov.uk) can answer any queries regarding the instrument.