

**EXPLANATORY MEMORANDUM TO  
THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS)  
(AMENDMENT) ORDER 2009**

**2009 No. 2457**

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

2. **Description**

2.1 This instrument amends the Public Interest Disclosure (Prescribed Persons) Order 1999 (S.I. 1999/1549) (“the 1999 Order”). It adds the Financial Reporting Council Limited (FRC) and three of its operating bodies (the Professional Oversight Board, the Financial Reporting Review Panel and the Accountancy and Actuarial Discipline Board) to the list of prescribed persons in the Schedule to the 1999 Order in respect of specified matters. It also adds the Independent Regulator of NHS Foundation Trusts (the Regulator). As a result, where workers make a qualifying disclosure to the Regulator, FRC or any of those bodies in respect of a specified matter, then (subject to the satisfaction of certain additional conditions) they will benefit from the statutory protection against detrimental treatment by their employers for making such a disclosure.

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

3.1 None.

4. **Legislative Context**

4.1 The Public Interest Disclosure Act 1998 (c.23) amended the Employment Rights Act 1996 (c.18) (“the 1996 Act”) so as 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 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. This Order adds the FRC and three of

its operating bodies (the Professional Oversight Board, the Financial Reporting Review Panel and the Accountancy and Actuarial Discipline Board) and the Regulator to the Schedule in respect of specified matters.

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

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. This Order adds the FRC and its operating bodies the Professional Oversight Board, the Financial Reporting Review Panel and the Accountancy and Actuarial Discipline Board in respect of the following specified matters –

- (a) the independent oversight of the regulation of the accountancy, auditing and actuarial professions;
- (b) the independent supervision of Auditors General;
- (c) the monitoring of major audits;
- (d) the registration of third country auditors;
- (e) compliance with the requirements of legislation relating to accounting and reporting;
- (f) the investigation of the conduct of auditors, accountants or actuaries and the holding of disciplinary hearings in public interest cases.

7.3 The FRC is the UK’s independent regulator responsible for promoting confidence in corporate reporting and governance. Through its operating bodies it performs a number of functions in relation to the regulation of accountants, auditors and actuaries and the enforcement of statutory requirements on the content of company accounts and reports.

7.4. Through its Professional Oversight Board (POB) the FRC has the role of overseeing the system of regulation of auditors under Part 42 of the Companies Act 2006. The oversight of the accountancy and actuarial professions is undertaken on a voluntary basis. POB is also the Independent Supervisor under Part 42 of the Auditors General in their conduct of statutory audit of some publicly owned companies. The Audit Inspection Unit (AIU) of the POB monitors audits of listed companies and of others where there is a significant public interest. POB maintains a register of auditors from countries outside the EU which are admitted to trading on regulated markets in the EU.

7.5. Through the Accountancy and Actuarial Discipline Board (AADB) the FRC handles the most important disciplinary cases involving accountants, auditors and actuaries which raise important issues affecting the public interest.

7.6. Through the Financial Reporting Review Panel the FRC reviews the annual accounts of public and large private companies and of limited liability partnerships to determine whether they comply with relevant legislation and applicable accounting standards. It also keeps under review periodic accounts and reports that are produced by issuers of transferable securities that are required to comply with accounting and reporting requirements imposed by rules made under Part 6 of the Financial Services and Markets Act 2000.

7.7. Being prescribed should encourage workers to provide the FRC with information about matters such as:

- omissions and misstatements in accounts and reports that the FRC would not otherwise know existed;
- the conduct of individuals or firms which should be investigated under one of the AADB's disciplinary schemes;
- the conduct of individuals or firms which are already subject to investigation or disciplinary proceedings by the AADB;
- audits undertaken by the Auditors General;
- concerns about particular audits which are the subject of monitoring by the AIU which may inform the selection of audits for monitoring in future;
- any shortcomings in the regulation of the accountancy, audit or actuarial professions by the relevant professional body.

7.8 No formal consultation has been undertaken but the FRC has been consulted.

7.9 This Order also adds the Regulator in respect of the following specified matters –

- (a) the regulation and performance of NHS foundation trusts; and

(b) any activities not covered by (a) in relation to which the Independent Regulator of NHS Foundation Trusts exercises its functions under the National Health Service Act 2006.

7.10 NHS foundation trusts (FTs) established under section 30 of the National Health Service (NHS) Act 2006 differ from NHS trusts established under section 25 of the NHS Act 2006. The former are public benefit corporations authorised and regulated by the Regulator. FTs are not directed by the Department of Health. An NHS trust can apply to the Regulator under section 33 of the 2006 Act to become an FT.

7.11 The Regulator was established under section 31 of the NHS Act 2006 after the 1999 Order came into force, therefore it was not listed as a prescribed person. The Regulator regulates just over half of the acute and mental health trusts in the NHS. It is Government policy that all NHS trusts will have the opportunity to become FTs thus widening the scope of the Regulator in the future.

7.12 Applications for FT status can also be made by other bodies to the Regulator therefore potentially extending the Regulator's remit even further.

7.13 By adding the Regulator to the list of prescribed persons, it enhances the protection for the Regulator's own employees but also the extensive number of employees of NHS FTs who may wish to make protected disclosures within the remit of the 1999 order. Such complaints may be related to concerns around patient safety and standards of care therefore this would only enhance accountability, governance and quality standards across the NHS.

7.14 No formal consultation has been undertaken but the Regulator has been consulted.

## **8. Consultation outcome**

8.1 No formal consultation exercise was undertaken for this Order.

## **9. Guidance**

9.1 Guidance will be updated. This includes electronic and other media, such as [Businesslink.gov.uk](http://Businesslink.gov.uk).

## **10. Impact**

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

10.2 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.

**11. Regulating small business**

11.1 The legislation does not increase the regulation applicable to small business. The impact on small business is limited to the extent to which regulatory bodies may receive disclosures of information from employees of businesses who might not have made them had those bodies not been prescribed persons

**12. Monitoring and review**

12.1 The Public Interest Disclosure Act (PIDA) legislation is monitored by the Department for Business, Innovation and Skills, which will also monitor the effectiveness of the gateway to the Financial Reporting Council. The Department of Health will monitor the effectiveness of the gateway to the Regulator.

**13. Contact**

13.1 Freya Horsfield at the Department for Business, Innovation and Skills tel: 020 7215 5016 or email [freya.horsfield@bis.gsi.gov.uk](mailto:freya.horsfield@bis.gsi.gov.uk).