

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT)**  
**ORDER 2014**

**2014 No. 596**

**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 amends the list of prescribed persons in the Public Interest Disclosure (Prescribed Persons) Order 1999 (“the 1999 Order”). 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 amends the 1999 Order to include Members of the House of Commons (“MPs”) in the prescribed persons Schedule. They will be prescribed persons in relation to all matters listed in the Schedule.

**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 amends the 1999 Order so as to make MPs prescribed persons in relation to qualifying disclosures in respect of any matter listed in the Schedule to the Order.

7.2 MPs are often well placed to make representations on behalf of whistleblowers, including to regulatory agencies of the kind that already feature in the 1999 Order. Whistleblowers are already protected in certain circumstances when they make qualifying disclosures to MPs: certain disclosures to Ministers qualify for protection under 43E of the 1996 Act and disclosures to anyone, including MPs, is permitted if the conditions in section 43G of the 1996 Act are met (for example, where a worker has a good reason for not making a disclosure to their employer). Consequently, the change made by this instrument – automatically protecting individuals who make qualifying disclosures to an MP in relation to a matter listed in the 1999 Order – is incremental but it is hoped that it will help to make the existing framework more effective.

7.3 The 1999 Order has now been extensively amended and the Department for Business, Innovation and Skills (“the Department”) aims to consolidate either the whole Order or just the Schedule (where the bulk of the changes have been made) later this year.

## **8. Consultation outcome**

8.1 The Department has consulted extensively on whistleblowing in the form of a call for evidence. It expects to be able to publish a response to the call for evidence shortly. The change made by this instrument was not consulted on specifically but was inspired by a ten minute rule Bill presented by David Davis MP on 19 November 2013 following the call for evidence. The Department has proceeded with the change without further formal consultation.

## **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 subject the prescribed persons list to internal review at least annually to ensure the prescribed persons on the list remain relevant. 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**

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