

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS)**  
**(AMENDMENT) (No. 2) ORDER 2015**

**2015 No. 1981**

**1. Introduction**

1.1 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. 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”) to include some persons not previously included, the deletion of others and some amendments to the description of matters for which certain persons are prescribed, including the correction of some minor errors.

**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 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**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 2014 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 makes amendments to the Schedule to the 2014 Order to keep it up to date.

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

## **7. Policy background**

### *What is being done and why*

7.1 The Coalition Government committed in a Government Response of June 2014 (among other measures) to update the list of prescribed persons and to review the list on an annual basis going forward.

7.2 This instrument amends the 2014 Order to reflect changes made to local authority auditing governance in England by the Local Audit and Accountability Act 2014 (“the 2014 Act”) following the abolition of the Audit Commission on 31 March 2015. It amends the 2014 Order so as to omit the Audit Commission for Local Authorities and the National Health Service in England from the list of prescribed persons to reflect the closure of the Audit Commission on 31 March 2015. It also further amends the 2014 Order to make clear that following the new audit regime introduced by the Local Audit and Accountability Act 2014 on 1st April 2015, disclosures can still be made to the external auditors of the relevant authorities.

7.3 This Order implements the Ministry of Defence’s recommendation that the Single Source Regulations Office should be named as a prescribed person in the 2015 Order. The Single Source Regulations Office (the ‘SSRO’) was established in July 2014 as the regulator of defence equipment and services, as provided for by the Defence Reform Act 2014 and the Single Source Contract Regulations 2014. The inclusion of the Single Source Regulations Office on the prescribed persons list will enable individuals to raise concerns about potential malpractice in the defence supply chain.

7.4 The entry relating to the Health and Safety Executive is amended to substitute a new simplified description of matters.

7.5 The instrument also amends the description of matters in relation to the entry for the Homes and Communities Agency to provide greater clarity that the relevant matters are the conduct of the business of registered providers of social housing.

7.6 This Order reflects changes made to public sector pension schemes made by the Public Service Pensions Act 2013. The Pensions Regulator is already a prescribed person in matters relating to occupational pension schemes. The purpose of the amendment is to reflect the extended regulatory oversight of public service schemes under the Public Service Pensions Act 2013. Removal of the word ‘other’ from the description of matters makes it clear that their responsibility is not limited to private pension arrangements.

7.7 The Order also corrects an error to the entry for the Prudential Regulation Authority.

7.8 An additional description of matters has been added to the entry relating to the Welsh Ministers to include “matters relating to the environment and natural resources as set out in the Natural Resources Body for Wales (Establishment) Order 2012”.

7.9 The ‘Freedom to Speak Up’ report into openness and transparency within the NHS (published 11 February 2015) included various recommendations, principles and

actions in relation to whistleblowing in the NHS. Sir Robert Francis QC suggested in that report that certain national and local oversight bodies for health and social care services should be added to the list of prescribed persons. Adding such bodies to the Schedule of prescribed persons in the 2014 Order – for example, Health Education England (HEE) and the NHS Commissioning Board – is one element of the Government’s response to the ‘Freedom to Speak Up’ report.

- 7.10 However, it was decided that it was not appropriate to include all the bodies suggested by Sir Robert at this time. In addition, some of the bodies named (for example Public Health England and NHS Protect) were not considered persons in their own right for the purposes of the whistleblowing legislation. As a result their “parent bodies” have been listed as prescribed persons.
- 7.11 The health related amendments add Health Education England, the National Health Service Commissioning Board, the NHS Business Services Authority and the Secretary of State for Health as new prescribed persons for specified matters. They also amend the entry relating to the Care Quality Commission (CQC) to add matters which relate to the functions of the Healthwatch England Committee (a committee of the CQC).
- 7.12 Finally, following legislative changes made by the Ethical Standards in Public Life in Scotland etc. (Scotland) Act 2000 and the enhancement of the Scottish Parliamentary Commission and Commissioners etc. Act 2010, the role of the Chief Investigating Officer has been subsumed by the Commissioner for Ethical Standards in Public Life in Scotland, and therefore the Standards Commission does not have an investigatory role to take any action about disclosures made to them. As a result this Order identifies the Commissioner for Ethical Standards in Public Life in Scotland as a prescribed person on the 2015 Order. This should result in the Commissioner being able to receive and take action to disclosures under their existing legal powers.

## **8. Consultation outcome**

- 8.1 No formal consultation for these changes has been undertaken as these measures do not grant any new powers or impose any new obligations. The bodies were each consulted informally and agreed that it was appropriate for the amendments in relation to their various entries be made and for the new bodies to be listed as a prescribed persons.

## **9. Guidance**

- 9.1 The Department will update Government’s published guidance, “*Blowing the whistle: list of prescribed people and bodies*” to include the new bodies that have been added to the list of prescribed persons and reflect changes made to some of the description of matters.

## **10. Impact**

- 10.1 There is no quantifiable impact on business, charities or voluntary bodies and the instrument imposes no new obligations on those organisations.
- 10.2 The impact on the public sector is limited to the extent to which the prescribed bodies may receive disclosures of information from workers who might not otherwise have made them had that body not been prescribed.
- 10.3 An Impact Assessment has not been produced for this instrument.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 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 small businesses.

## **12. Monitoring & 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 2016, the efficacy of the changes made by this instrument will be considered and further amendments may be made.

## **13. Contact**

- 13.1 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](mailto:bertha.eson-benjamin@bis.gsi.gov.uk)) can answer any queries regarding the instrument.