

EXPLANATORY MEMORANDUM TO
THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS)
(AMENDMENT) ORDER 2017

2017 No. 880

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 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.

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 England & Wales and Scotland.
- 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 Government continues to review the list of prescribed persons on an annual basis and make any amendments as may be necessary. In this Order the following amendments and additions are made:
- 7.2 The order replaces sixth form institutions as a prescribed matter for the Secretary of State for Education with the broader matter of Institutions within the further education sector' as they are defined in the Further and Higher Education Act 1992. This is in order to capture all the institutions within that definition.
- 7.3 An amendment to reflect a name change of the Care Council for Wales to Social Care Wales. They will be responsible for matters relating to the registration of social care workers.
- 7.4 An amendment to the list of matters for which the Welsh Ministers are so prescribed to include matters relating to regulated services as defined in section 2 of the Regulation and Social Care (Wales) Act 2016.
- 7.5 An amendment to the matters prescribed for the Bank of England to reflect changes made by the Banking Act changing the name of Interbank Payment Systems to Payment Systems.
- 7.6 The Wales Audit office and Audit Scotland are both removed from the Order as they do not themselves have the appropriate powers or duties to investigate disclosures. Such powers lie with the Auditor General for Wales and the Auditor General for Scotland, who are already prescribed for the relevant matters.

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 person.

9. Guidance

- 9.1 The Department will update Government's published guidance, "*Whistleblowing: list of prescribed people and bodies*" to update 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 2018, the efficacy of the changes made by this instrument will be considered and further amendments may be made.

13. Contact

- 13.1 Gurpreet Chana (Gurpreet.Chana.@beis.gov.uk or 020 7215 8971) at the Department for Business, Energy and Industrial Strategy can answer any queries regarding the instrument.