

## **EXPLANATORY MEMORANDUM TO**

### **THE UTILITIES ACT 2000 (AMENDMENT OF SECTION 105) ORDER 2020**

**2020 No. 106**

#### **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 Section 105 of the Utilities Act 2000 “the 2000 Act” imposes a general restriction on the disclosure of certain information collected by the GB energy market regulator and associated functionaries, whilst carrying out their statutory duties, subject to a number of specified exemptions. This order amends section 105 of the 2000 Act to include an additional exemption to allow the regulator and its workers to disclose information when this disclosure is a “protected disclosure” for the purpose of the Employment Rights Act 1996 “the 1996 Act”; or, for the purpose of civil proceedings brought in reliance on section 47B (protected disclosure – protection from detriment) or 103A (protected disclosure – protection from unfair dismissal) of the 1996 Act.
- 2.2 Under section 43B of the 1996 Act, a disclosure does not constitute a “qualifying disclosure” if the person making it commits a criminal offence by making it. This order clarifies that the criminal offence for disclosure under section 105(9) of the 2000 Act does not apply to the interpretation of a qualifying disclosure under the 1996 Act.

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

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

- 3.1 None.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws) at this stage.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is Great Britain.
- 4.2 The territorial application of this instrument is Great Britain.

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

- 5.1 The Minister of State for Business, Energy and Clean Growth has made the following statement regarding Human Rights:

“In my view the provisions of the Utilities Act 2000 (Whistleblowing Amendment of Section 105) Order 2020 are compatible with the Convention rights.”

## **6. Legislative Context**

- 6.1 This Order amends the 2000 Act to enable the relevant regulator and its workers to disclose information otherwise protected by section 105 to pursue employment action for whistleblowing.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Section 105 of the Utilities Act 2000 “the 2000 Act” imposes a general restriction on the disclosure of certain information collected by the GB energy market regulator and associated functionaries, whilst carrying out their statutory duties, subject to a number of specified exemptions.
- 7.2 This instrument will add a further exemption to section 105. The exemption will enable information collected by the energy market regulator, in the course of its duties, to be disclosed for whistleblowing purposes. Specifically, the change will enable information caught by section 105 to be disclosed both when a worker makes a whistleblowing claim (known as a “protected disclosure”) and during employment tribunal proceedings that may result from the whistleblowing claim.
- 7.3 As currently drafted section 105 prevents both the relevant regulator and its workers from disclosing information in these instances, which means that both an Employment Tribunal and a Court are unable to access the full information to consider such cases.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

## **9. Consolidation**

- 9.1 None.

## **10. Consultation outcome**

- 10.1 No consultation has taken place in respect of this instrument.

## **11. Guidance**

- 11.1 There is no guidance in relation to this instrument.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact is believed to be de minimis.

**13. Regulating small business**

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

**14. Monitoring & review**

14.1 This instrument is not subject to review.

**15. Contact**

15.1 Lauren McHale at the Department for Business, Energy and Industrial Strategy, email: [lauren.mchale@beis.gov.uk](mailto:lauren.mchale@beis.gov.uk) should be contacted in relation to any queries regarding the instrument.

15.2 Jane Walker, Deputy Director for Energy Markets and Affordability, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Kwasi Kwarteng at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.