

**EXPLANATORY MEMORANDUM TO**  
**THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS)**  
**(AMENDMENT) ORDER 2022**

**2022 No. 1064**

**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 His Majesty.

**2. Purpose of the instrument**

- 2.1 This Order amends the list of prescribed persons for the purpose of whistleblowing in the Public Interest Disclosure (Prescribed Persons) Order 2014 (“the 2014 Order”) to add seven persons not previously included, amend the matters on which six prescribed persons can receive disclosures and delete the entry of one person.

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

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

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is Great Britain.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Great Britain.

**5. European Convention on Human Rights**

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

**6. Legislative Context**

- 6.1 Part IVA of the Employment Rights Act 1996 (“the 1996 Act”) provides employment protection for workers who make certain disclosures of information.
- 6.2 The 1996 Act defines the categories of disclosure which qualify for protection (a “qualifying disclosure”). This includes disclosures which the worker reasonably believes are in the public interest and tends to show wrongdoing including, for example, environmental damage or a miscarriage of justice. The Act also defines the circumstances in which such disclosures will be protected. Section 43F of the Act provides that one type of 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.
- 6.3 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.

6.4 This instrument makes amendments to the Schedule to the 2014 Order to keep it up to date.

## **7. Policy background**

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

- 7.1 The Government continues to review the list of prescribed persons on a regular basis and make any amendments as may be necessary. This has been done each year since 2014 with the exception of 2020 and 2021 due to the COVID-19 pandemic.
- 7.2 In this Order the following amendments and additions are made:
- 7.3 The addition of the Chief Inspector of Drinking Water or inspectors appointed under section 86(1) of the Water Industry Act 1991, known collectively as the Drinking Water Inspectorate as prescribed persons. The Drinking Water Inspectorate will be able to receive disclosures in relation to the quality and sufficiency of water supply in England and Wales and the security of network and information systems in the drinking water supply and distribution sector in England and Wales.
- 7.4 The addition of Environmental Standards Scotland as a prescribed person. Environment Standards Scotland will be able to receive disclosures in relation to its functions, including ensuring that public authorities in Scotland are compliant with environmental law.
- 7.5 Removing the European Securities and Markets Authority as a prescribed person. This reflects the fact that, since EU Exit, the relevant regulatory responsibilities of the European Securities and Markets Authority have been assigned to the Financial Conduct Authority. Consequently, all disclosures that could previously be made to the European Securities and Markets Authority will now be able to be made to the Financial Conduct Authority.
- 7.6 An amendment to the list of matters for which the Financial Conduct Authority is prescribed, to include matters relating to the regulation of the conduct of trade repositories and securitisation repositories and credit rating agencies. This reflects their new responsibilities under the Securities Financing Transactions, Securitisation and Miscellaneous Amendments (EU Exit) Regulations 2020, the Securitisation (Amendment) (EU Exit) Regulations 2019 and Credit Rating Agencies (Amendment etc) (EU Exit) Regulations 2019 respectively.
- 7.7 An amendment to the list of matters for which the Gas and Electricity Markets Authority is prescribed, to ensure that all matters within their purview are included. This includes matters relating to its role as a designated competent authority under the Network and Information Systems Regulations 2018.
- 7.8 An amendment to the list of matters for which the Health and Safety Executive is prescribed, to include matters relating to its functions pursuant to the agency agreement dated 23 May 2018 in relation to the Network and Information Systems Regulations 2018.
- 7.9 The addition of Members of the Scottish Parliament. In line with Members of the House of Commons, who are already listed as prescribed persons, Members of the Scottish Parliament will be prescribed for all matters for which other persons in the 2014 Order are prescribed.

- 7.10 The addition of the Natural Resources Body for Wales as a prescribed person. The Natural Resources Body for Wales will be able to receive disclosures in relation to the environment and natural resources in Wales.
- 7.11 The addition of the Office for Environmental Protection. The Office for Environmental Protection will be able to receive disclosures in relation its functions, including ensuring that public authorities in England are compliant with environmental law.
- 7.12 The addition of the Scottish Public Services Ombudsman as a prescribed person. The Scottish Public Services Ombudsman will be able to receive disclosures in relation to how whistleblowing disclosures are handled in the NHS in Scotland.
- 7.13 An amendment to the list of matters for which the Secretary of State for Business, Energy and Industrial Strategy is prescribed, to reflect the addition of responsibility as a designated competent authority under the Network and Information Systems Regulations 2018.
- 7.14 An amendment to the list of matters for which the Secretary of State for Health and Social Care is prescribed, to explicitly include matters relating to the functions of the Medicines and Healthcare Products Regulatory Agency and to reflect the fact that the United Kingdom Health Security Agency has replaced Public Health England.
- 7.15 The addition of Social Work England as a prescribed person. Social Work England will be able to receive disclosures on any matter within their purview, including the registration and fitness to practise of individuals they regulate.
- 7.16 An amendment to the list of matters for which Welsh Ministers are prescribed, to remove matters relating to the environment and natural resources in Wales. Such disclosures will now be made to the Natural Resources Body for Wales.

***Explanations***

*What did any law do before the changes to be made by this instrument?*

- 7.17 The 2014 Order lists the prescribed persons to whom a whistleblower can make a protected disclosure and specifies the matters on which each prescribed person is able to receive a disclosure.

*Why is it being changed?*

- 7.18 This instrument amends the list of prescribed persons to ensure that it is up to date. This is necessary to reflect the changes in the remit of some existing prescribed persons and to add new bodies.

*What will it now do?*

- 7.19 The 2014 Order will continue to list the prescribed persons and the matters on which they can receive disclosures. The amendments described at 7.2 to 7.16 ensure that it remains up to date.

**8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because the removal of the European Securities and Markets Authority is necessary as a result of EU exit.

## **9. Consolidation**

9.1 None.

## **10. Consultation outcome**

10.1 No formal consultation for these changes has been undertaken as these measures do not grant any new powers or impose any new obligations, other than upon prescribed bodies to report annually on disclosures received. The bodies and sponsoring government departments were each consulted informally and agreed that it was appropriate for the amendments in relation to their various entries to be made and for the new bodies to be listed as prescribed persons.

## **11. Guidance**

11.1 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.

## **12. Impact**

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 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.

12.3 A full Impact Assessment has not been prepared for this instrument because no significant impact on the private, voluntary or public sectors is foreseen.

## **13. Regulating small business**

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

13.2 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.

## **14. Monitoring & review**

14.1 The Department will continue to subject the prescribed persons list to internal review regularly to ensure the prescribed persons on the list remain relevant. At the time of the next review, the efficacy of the changes made by this instrument will be considered and further amendments may be made.

## **15. Contact**

15.1 William Higgins at the Department for Business, Energy and Industrial Strategy Telephone: 02072152326 or email: [will.higgins@beis.gov.uk](mailto:will.higgins@beis.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Michael Warren, Director for Labour Markets, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Dean Russell MP, Parliamentary Under Secretary of State (Minister for Enterprise and Markets), at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.