EXPLANATORY MEMORANDUM TO

THE PRESCRIBED PERSONS (REPORTS ON DISCLOSURES OF INFORMATION) (AMENDMENT) REGULATIONS 2022

2022 No. 1324

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 instrument amends the Prescribed Persons (Reports on Disclosures of Information) Regulations 2017 ("the 2017 Regulations") to exempt Members of the Scottish Parliament, who are being added as prescribed persons in The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2022 ("the 2022 Order"), from the requirement to report annually about the public interest disclosures which they receive from workers. It also makes a further amendment to the 2017 Regulations to reflect the fact that the European Securities and Markets Authority is being removed as a prescribed 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 The Parliamentary Under Secretary of State and Minister for Enterprise and Markets has made the following statement regarding Human Rights:

"In my view the provisions of The Prescribed Persons (Reports on Disclosures of Information) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 The Public Interest Disclosure (Prescribed Persons) Order 2014 ("the 2014 Order") prescribes persons to be recipients of whistleblowing disclosures for the purposes of Part 4A of the Employment Rights Act 1996.

6.2 The 2017 Regulations created an obligation on prescribed persons to report annually about the public interest disclosures which they receive from workers. It also

exempted certain prescribed persons from the obligation by excluding them from the definition of a 'relevant prescribed person' in Regulation 2.

6.3 The 2022 Order is amending the 2014 Order to, amongst other changes, add Members of the Scottish Parliament as prescribed persons and remove the European Securities and Markets Authority.

6.4 These regulations amend the list of prescribed persons that are exempted from the reporting duty to reflect these changes, by adding Members of the Scottish Parliament and removing the European Securities and Markets Authority.

7. Policy background

What is being done and why?

7.1 Following a 2013 call for evidence, the then Department for Business, Innovation and Skills introduced an obligation on most prescribed persons to annually report on the whistleblowing disclosures they received. The intention of this measure was to increase confidence that whistleblowing disclosures are looked into and to drive up transparency across prescribed persons on how they are handled.

7.2 Members of the Scottish Parliament, who are being added as prescribed persons in the 2022 Order, will be exempted from the reporting duty because, unlike the majority of prescribed persons, they do not have regulatory responsibility in a particular sector or certain type of wrongdoing. Additionally, it would not be appropriate to place upon them the administrative burden associated with preparing reports.

7.3 The same approach was taken with comparable prescribed persons, such as Members of the House of Commons and Ministers of the Crown, who are also exempt from the annual reporting duty.

7.4 Additionally, this instrument will remove the European Securities and Markets Authority from the list of prescribed persons that are exempt from the reporting duty as the body is being removed as a prescribed person in the 2022 Order.

Explanations

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

7.5 The 2017 Regulations placed an obligation on most prescribed persons to report annually on the protected disclosures they received. It also exempted certain prescribed persons from this obligation.

Why is it being changed?

7.6 Members of the Scottish Parliament are being added as prescribed persons in the 2022 Order. As they are not regulators of a sector or specific type of wrongdoing and there is an interest in ensuring that they are not burdened with the administration required to produce annual reports, they are being added to the list of prescribed persons that are exempted from producing annual reports.

7.7 The European Securities and Markets Authority is being removed as a prescribed person in the 2022 Order to reflect 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, they also need to be removed from the list of prescribed persons exempt from the reporting duty.

What will it now do?

7.8 The 2017 Regulations will predominantly remain the same. However, Members of the Scottish Parliament will be added to the list of prescribed persons that are exempted from the reporting duty and the European Securities and Markets Authority will be removed.

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 No consolidation is necessary.

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. The Scottish Government and HM Treasury have been consulted informally and agreed that it was appropriate to make these changes.

11. Guidance

11.1 This instrument does not place obligations on any body and therefore no guidance is necessary.

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 no significant impact on the private, voluntary or public sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that the Department will continue to subject the list of prescribed persons that are exempt from the reporting requirement to internal review regularly to ensure the prescribed persons on the list remain relevant.

15. Contact

15.1 William Higgins at the Department for Business, Energy and Industrial Strategy Telephone: 02072152326 or email: 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 Kevin Hollinrake MP, Parliamentary Under Secretary of State (Minister for Enterprise, Markets and Small Business), at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.