EXPLANATORY MEMORANDUM TO

THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT) ORDER 2004

2004 No.3265

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

This instrument will, subject to annulment in pursuance of a resolution of either House, come into force on 1st January 2005 and amend the Public Interest Disclosure (Prescribed Persons) Order 1999. The Independent Police Complaints Commission ("IPCC") is added to the list in that Order of persons prescribed under Part IV A of the Employment Rights Act 1996 as inserted by the Public Interest Disclosure Act 1998 ("PIDA"). It also specifies the descriptions of the matters in respect of which the Commission is prescribed.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background:

The instrument is made under section 43F of the Employment Rights Act 1996 as amended by the Public Interest Disclosure Act 1998.

5. Extent

The instrument applies to England and Wales and Scotland.

6. European Convention on Human Rights:

The Minister of State for the Home Department, Hazel Blears, has made the following statement regarding Human Rights:

In my view the provisions of THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT) ORDER 2004 are compatible with the Convention Rights.

7. Policy background:

7.1 PIDA provides protection to most employees from being subjected to any detriment by their employer in cases where they have made a qualifying disclosure - 'whistle blowing'.

7.2 PIDA makes special provision for disclosures to prescribed persons. Persons listed are statutory bodies which have been prescribed for the purpose of receiving disclosures about the matters concerned. Such disclosures are protected where the whistle blower meets certain statutory tests including a requirement that he reasonably believes that the information and any allegation are substantially true.

7.3 Police Officers were originally excluded from PIDA as they are not technically employees. Section 37 of the Police Reform Act 2002 inserted a new section 43KA into the Employment Rights Act 1996 so that police officers were protected by statute to ensure that they had the security to question and where necessary challenge or report wrongdoing. Section 37 was commenced on 1st April 2004.

7.4 The IPCC has a function to establish and maintain public confidence in the independence of investigations into the police. It acts as a high profile statutory body ensuring the integrity and accountability of the complaints system. It is therefore an appropriate body to be listed as a prescribed person and is well placed to provide advice and guidance to officers who have concerns and respond to disclosures where appropriate.

7.5 The key benefit of the IPCC being listed as a prescribed person under PIDA is that it will provide officers with a route to make disclosures where they feel uncomfortable to make an internal disclosure and want to go to a body that will be able to respond appropriately. An HMIC report stated in 1999: "There is a strong feeling among officers and support staff that retribution, subtle or direct, would result from making complaints against colleagues. There is a perception that no one commends such officers for demonstrating moral courage". This is precisely why police officers were brought within Part IV A of the Employment Rights Act and it is our expectation that the protection that this provides will go a long way to change this climate. It is considered, though, that providing police officers with a clear route to a prescribed person, where they feel they cannot raise a matter internally, is essential to ensure the exposure of wrongdoing, which is what public confidence requires.

7.6 The additional benefits are to:

- Promote consistency in the treatment of disclosures;
- Generate publicity in forces around all disclosure matters due to the profile of the IPCC.

7.7 The description of matters which a disclosure to the IPCC must relate to covers any matters relating to the conduct of a person serving with the police (as defined in section 12(7) of the Police Reform Act 2002) or of any other person in relation to whose conduct the IPCC exercises functions in or under legislation. A person serving with the police includes a member of a police force, a special constable and a civilian who is employed by a police authority. The other persons whose conduct falls within the IPCC's jurisdiction includes people serving with the Ministry of Defence Police and the British Transport Police Force, and staff providing services to a police authority under a contract (e.g. detention officers or escort officers).

Consultation:

7.8 No formal consultation has been undertaken. Previously under an agreement made in 2001 between the Association of Chief Police Officers and the Police Complaints Authority, the PCA acted as a point of contact outside the police service for use by prospective whistleblowers, this point of contact was set up to be the equivalent of a prescribed person under Part IV A of the 1996 Act. Now that police officers have been brought under that Act it is appropriate to replicate this agreement by making the IPCC prescribed. Liaison has been undertaken with the IPCC and the police staff associations.

8. Impact:

No Regulatory Impact Assessment has been prepared because no impact on the private or voluntary sector is foreseen. The effect of the instrument is to provide persons serving with the police with a route to make disclosures outside the force.

9. Contact:

Further information on this instrument can be obtained from:
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