EXPLANATORY MEMORANDUM TO

THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT) ORDER 2013

2013 No. 2213

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills 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 1999 ("the 1999 Order"). Workers can benefit from employment protection if they blow the whistle by making a disclosure to a prescribed person.

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

3.1 None.

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 disclosures which qualify for protection and the circumstances in which such disclosures will be protected. Section 43F of that 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 1999 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 amends the 1999 Order to reflect changes made to policing governance in England and Wales by the Police Reform and Social Responsibility Act 2011.

4.5 This instrument also implements a recommendation from the Report of the Mid Staffordshire NHS Trust Public Inquiry (published on 6th February 2013) to add the health and social care professional regulatory bodies to the list of prescribed persons in the 1999 Order.

4.6 Finally, to reflect changes made by the Civil Aviation Act 2012 to the functions of the Civil Aviation Authority ("CAA"), this instrument adds "aviation security" to the matters in respect of which qualifying disclosures can be made to the CAA.

5. Territorial Extent and Application

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

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

7. Policy background

7.1 This Order amends the 1999 Order so as to make it clear that the Audit Commission is a prescribed person in relation to public interest disclosures on the proper conduct of public business, value for money, fraud and corruption of elected local policing bodies, chief constables of police forces in England and Wales and the Commissioner of the Metropolitan Police. This Order further amends the 1999 Order so that a disclosure made to a police and crime panel in relation to a relevant office holder can benefit from the whistleblowing protections. Further, this Order amends the 1999 Order so that complaints relating to the statutory report of an officer of an elected local policing body, chief constable or the Metropolitan Police Commissioner can benefit from the whistleblowing protections when made to the relevant police and crime panel or elected local policing body.

7.2 In addition, this Order amends the 1999 Order to make the health and social care professional regulatory bodies prescribed persons and therefore disclosures to those bodies can be protected. This will ensure protection for NHS and social care staff who wish to raise a concern with a professional regulator.

7.3 The inclusion of these regulators on the prescribed persons list will enable individuals to raise concerns outside their employing organisation, where appropriate. This should result in regulators receiving and being able to take suitable action on disclosures under their existing legal powers. The Report of the Mid Staffordshire NHS Trust Public Inquiry (published on 6th February 2013) included various recommendations in relation to whistleblowing in the NHS. Adding the professional regulatory bodies to the list of prescribed persons is one element of the Government's response to the Mid Staffordshire Inquiry Report, albeit this was first proposed before the Report was published.

7.4 Health Improvement Scotland (HIS) is already a prescribed person for the purposes of the 1999 Order in matters relating to the provision of independent health care services. The amendment to the 1999 Order in respect of HIS will extend the description of matters that can benefit from the

whistleblowing protections, to correspond with all functions of HIS as set out in section 10A of the National Health Service (Scotland) Act 1978. The amendment in respect of the Scottish Social Services Council, which is also already a prescribed person for the purposes of the 1999 Order, is to provide clarity as to the relevant legislative framework.

7.5 The Civil Aviation Act 2012 conferred certain aviation security regulatory functions on the CAA. It is currently planned to bring these provisions into force in April 2014.

7.6 The CAA is already a prescribed person for the purposes of the 1999 Order in the matter of compliance with the requirements of civil aviation legislation, including aviation safety. In order to remove any ambiguity as to whether or not the matter for which the CAA is a prescribed person includes aviation security, this instrument amends the CAA's entry in the Schedule to the 1999 Order by adding "aviation security" to the matters in respect of which qualifying disclosures can be made to the CAA. This should result in the CAA receiving disclosures that it may not otherwise have received and taking suitable action as a result.

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 them to be listed as prescribed persons.

9. Guidance

9.1 The relevant Departments will use appropriate communication channels and press avenues to publicise these changes.

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as it has no quantifiable impact on business, charities or voluntary bodies and imposes no new obligations on those organisations.

10.2 The impact on the public sector is limited to the extent to which the prescribed regulator may receive disclosures of information from workers who might not otherwise have made them had the regulator not been a prescribed body.

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11. Regulating small business

11.1 The legislation applies to small business.

11.2 This instrument does not impose additional burdens on businesses and therefore there is no need to minimise the impact of the requirements on firms employing up to 20 people.

12. Monitoring & review

12.1 The Home Office, working with policing partners, continues to keep the arrangements for ensuring the integrity of the police and elected local policing bodies under review, including where appropriate the arrangements for whistleblowing

12.2 The Professional Standards Team in the Department of Health has official accountability meetings with each of the health and social care professional regulatory bodies. In addition, policy officials have regular contact with the regulators on policy matters. This gives the professional regulatory bodies an opportunity to raise any issues which might arise from adding them to the list of prescribed persons in the 1999 Order.

12.3 The Civil Aviation Act 2012 will have a post implementation review in 2019 and the effectiveness of the policy will be reviewed as part of that. This will allow the impact of the regulatory changes, which will take time to work through, to be properly assessed. The CAA will be asked to log all aviation security related qualifying disclosures received and record the way they are handled. That process should confirm whether this policy has led to changes in the levels of disclosure by aviation sector workers and whether compliance has improved within the aviation security regime.

13. Contact

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