EXPLANATORY MEMORANDUM TO

THE PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT) ORDER 2019

2019 No. 1341

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 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 the Commission for Equality and Human Rights as a new prescribed person;
- Add the Regulator of Social Housing as a prescribed person in place of the Homes and Communities Agency as the relevant function was transferred;
- Update the names of Social Care and Social Work Improvement Scotland and the Independent Office for Police Conduct; and,
- Update the matters which whistleblowers can report to the European Securities and Markets Authority, Financial Conduct Authority and Welsh Ministers.

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 at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England & Wales and Scotland.

4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

5.1 As the instrument is subject to 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 ("qualifying disclosures", which include public interest disclosures about environmental damage and miscarriages of justice, for example) and the circumstances in which such disclosures will be protected. Section 43F of the 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.

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 an annual basis and make any amendments as may be necessary. In this Order the following amendments and additions are made:

7.2 Changing the name of the Care Inspectorate to Social Care and Social Work Improvement Scotland, which is the correct legal body.

7.3 Adding the Commission for Equality and Human Rights as a prescribed person. The Commission has responsibility for compliance with legislation relating to equality and human rights.

7.4 An amendment to the list of matters for which the European Securities and Markets Authority is prescribed, to:

- Better reflect their responsibilities in relation to undertakings for collective investment in transferable securities under Directive 2009/65/EC of the European Parliament and of the Council of 13th July 2009 as amended by Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC (over-the-counter) derivatives, central counterparties and trade repositories;
- Add their responsibilities in relation to the conduct of trade repositories under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 as last amended by Regulation (EU) No 2019/834 of the European Parliament and of the Council of 20 May 2019; and,
- Add their responsibilities in relation to the conduct of persons who are credit ratings agencies registered under Chapter 1 of Title 3 of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 or who are certified in accordance with Article 5(2) of that regulation.

7.5 An amendment to the list of matters for which the Financial Conduct Authority is prescribed, to:

- Add their responsibilities in relation to the conduct of self-regulatory organisations in relation to compliance with their supervision requirements as defined in regulation 2 of the Oversight of Professional Body Anti-Money Laundering and Counter Terrorist Financing Supervision Regulations 2017 or

the requirements imposed on self-regulatory organisations by or under those Regulations;

- Add their responsibilities in relation to the conduct of persons who are supervised contributors within the meaning of Article 3(1)(10) of Regulation (EU) no. 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014;
- Add their responsibilities in relation to the conduct of persons who are Miscellaneous BM persons within the meaning of regulation 5(2) of the Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 in relation to relevant requirements as defined in regulation 2(1) of those Regulations; and
- Add their responsibilities in relation to the conduct of persons subject to functions conferred on the Financial Conduct Authority under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC (over-the-counter) derivatives, central counterparties and trade repositories.

7.6 Removal of the Homes and Communities Agency and addition of the Regulator of Social Housing as a prescribed person. The matters that were prescribed for the Homes and Communities Agency were transferred to the Regulator of Social Housing under regulation 2(2)(c) of the Legislative Reform (Regulator of Social Housing) (England) Order 2018, S.I. 2018/1040.

7.7 Changing the name of the Independent Police Complaints Commission to the Independent Office for Police Conduct, to reflect the change made by section 33(1) of the Policing and Crime Act 2017.

7.8 Additions to the list of matters for which the Welsh Ministers are prescribed to better reflect their responsibilities for particular independent healthcare providers under Part 2 of the Care Standards Act 2000 and for the use and application of the Mental Health Act 1983.

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.

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 quantifiable impact on business, charities or voluntary bodies and the instrument imposes no new obligations on those organisations.

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, and report on these disclosures annually.

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 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 at least annually to ensure the prescribed persons on the list remain relevant. At the time of the annual review in 2020, the efficacy of the changes made by this instrument will be considered and further amendments may be made.

15. Contact

15.1 Andy Staniford at the Department for Business, Energy and Industrial Strategy, Telephone: 020 7215 2912 or email: andy.staniford@beis.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Helen Martin and Joanna Warner, Deputy Directors for Individual Rights & Migration, at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst, Minister for Small Business, Consumers and Corporate Responsibility at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.