EXPLANATORY MEMORANDUM TO THE

PUBLIC INTEREST DISCLOSURE (PRESCRIBED PERSONS) (AMENDMENT) ORDER 2005

2005 No. 2464

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 1999 ("the 1999 Order") contains a schedule which comprises a list of prescribed persons and bodies and describes the matters for which they are prescribed. A qualifying disclosure made to a prescribed person or body in relation to a matter for which they are prescribed will be a protected disclosure (subject to the satisfaction of certain additional conditions) and a worker making such a disclosure will benefit from the statutory protection against detrimental treatment by his employer for making such a disclosure. The Public Interest Disclosure (Prescribed Persons) (Amendment) Order 2005 ("the Order") up-dates the Schedule to the 1999 Order, making deletions and additions to the list of prescribed persons and amending some of the prescribed matters.

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

3.1 None.

4. Legislative Background

4.1 The Public Interest Disclosure Act 1998 made amendments to the Employment Rights Act 1996 ("the 1996 Act") to provide employment protection for workers who make certain disclosures of information. The 1996 Act defines the categories of disclosures which qualify for protection and the circumstances in which such disclosures will be protected. In particular, under section 43F of the 1996 Act, 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.

4.2 Under section 43F of the 1996 Act the Secretary of State may make an order prescribing persons for the purposes of that section. Any such order may specify persons or descriptions of persons and must specify the descriptions of matters in respect of which each person or persons, or persons of each description, is or are prescribed. The 1999 Order was made pursuant to section 43F. It includes a Schedule of prescribed persons and descriptions of persons and descriptions of the matters for which they are prescribed. The 1999 Order was substantially amended in 2003, by the substitution of a new Schedule, to take account of changes (both legislative and policy) which impacted both on the prescribed persons and descriptions of persons and the descriptions of matters. Further amendments were made in 2004 to deal with

legislative changes relating to specific prescribed persons. This Order makes further changes to the Schedule to take account of both legislative and policy changes which have occurred since 2003 and which affect the list of prescribed persons and descriptions of persons or the matters for which they are prescribed. The Order is made pursuant to the powers in section 43F of the 1996 Act.

5. Extent

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 The Employment Rights Act 1996 provides employment protection for workers who 'blow the whistle' on wrongdoing in the workplace, provided they do so in a responsible way. While the legislation is designed to encourage internal disclosure, to the employer or via procedures authorised by the employer, disclosures beyond the workplace can also attract protection. They includes disclosure to a person prescribed by the Secretary of State. Such disclosures are protected as long as the worker meets specified tests, including that of reasonable belief that the information disclosed is substantially true.

7.2 A number of bodies were prescribed when the legislation first came into force and additions have since been made. The present Order, however, is a technical exercise. It secures that where legislative changes have caused a formerly prescribed body to be replaced by a new body with responsibility for the same matters, the new body (or more than one, where appropriate) is prescribed and the old one deleted. Thus the Utilities Act 2000 transferred the functions of the Director General of Gas Supply and the Director General of Electricity Supply to the Gas and Electricity Markets Authority. Accordingly, the Order prescribes the Gas and Electricity Markets Authority and deletes the Director General of Gas Supply and the Director General of Electricity Supply. Where the remit of a new body is wider than that of one which it replaces, and it is considered appropriate for workers to be protected in respect of disclosures about the wider remit, the new body has been prescribed in relation to a wider range of matters than the old one.

7.3 No formal consultation has been undertaken but interested statutory bodies and government departments have been consulted.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is limited to the extent to which regulatory bodies may receive disclosures of information from workers who might not have made them had those bodies not been prescribed persons.

9. Contact

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