



Department  
for Business  
Innovation & Skills

**PRESCRIBED BODIES: ANNUAL  
REPORTING REQUIREMENTS ON  
WHISTLEBLOWING**

Government Response

MARCH 2015

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## Ministerial Foreword



Whistleblowing is a crucial element of today's employment landscape. It's vital that whistleblowers are able to raise important issues of public interest and to prevent business-critical and life-threatening situations from escalating. Of course it should not be left to an individual employee to call for action against malpractice, but where malpractice is occurring the whistleblower's voice needs to be heard.

All too often we hear that whistleblowers have experienced unacceptable treatment once they have brought their concerns to light. Only last month Sir Robert Francis's Freedom to Speak Up Review reported on the bullying and intimidating behaviours that many NHS whistleblowers have faced after reporting poor practice. This cannot continue.

Over the past five years, this Government has taken steps to help address the challenges whistleblowers face. We have implemented legislative and non-legislative changes to strengthen protections and set clear expectations of employers' handling of whistleblowing.

This month we will also publish new guidance for whistleblowers, employers and prescribed persons so that they can more easily navigate the legislation.

This Government Response concludes the consultation we ran last autumn, to inform proposed regulations to impose a duty on prescribed persons to report annually on whistleblowing activity. We know that many whistleblowers believe little is done about the issues they raise. An annual reporting process will help improve transparency and confidence in the way that prescribed persons handle whistleblowing.

The Small Business, Enterprise and Employment Bill, currently before Parliament, include a provision for prescribed persons to be required to report annually in the future. Whistleblowing reports will increase confidence for those who highlight wrongdoing, and create better, safer workplaces as a result.



**Jo Swinson**

**Under-Secretary of State for Employment Relations and Consumer Affairs**

## Executive Summary

The Prescribed bodies' annual reporting requirement on whistleblowing consultation ran from 1 August to 30 September. This consultation sought views on the practical implication of a legal power contained in the Small Business, Enterprise and Employment Bill to require certain prescribed persons to report annually on public interest disclosures (whistleblowing disclosures) that they receive. We received 49 written responses to the consultation of which just under half of the responses were from prescribed persons.

Following the analysis of the responses to the consultation and further discussions with stakeholders during the consultation process, the Government has begun drafting regulations which will enable a power in the Small Business Enterprise and Employment Bill to grant the Secretary of State a power to require persons prescribed under section 43F of the Employment Rights Act 1996 to report annually on whistleblowing issues.

There was general support for the reporting duty as a means to drive up transparency and consistency. It is believed that greater transparency from prescribed persons about how they handle whistleblowing disclosures will drive up standards across prescribed persons so that a greater number are demonstrating good practice.

However, the feedback we have received has provided a robust challenge to the development of this regulation. From the responses we received we can conclude the following:

- The report will have to strike a delicate balance between the desires of the worker to know that action has been taken in respect of their public interest disclosure, with the constraints that the prescribed person operates within, such as their responsibilities to maintain confidentiality.
- We will make specific provisions to ensure the report will not require the disclosure of any information which could identify the worker who made the disclosure or the employer to which the disclosure relates to.
- The reports will need to provide a wider context of any statistical data provided, to ensure it is relevant to those accessing the information and to help with bringing a level of consistency across reports from prescribed bodies.
- The requirement on prescribed persons must not be too prescriptive so that it is relevant for all the diverse bodies listed as prescribed persons.
- The reporting process should not be too onerous and must retain a degree of flexibility to account for the diverse bodies listed as prescribed persons.
- The report will be much more light touch and flexible than we were originally thinking. This will help accommodate the varying roles and remits of the prescribed persons. We therefore anticipate the regulations to require only a certain amount of specific content within the reports, providing the option to include additional information. This is one way we will make the format more flexible.

- For additional flexibility, prescribed persons will be able to choose whether they publish the information within existing reports or as a stand-alone report. There will also be some flexibility around the timing of the report.
- The report should be available on line for maximum accessibility
- The duty to report should apply to all prescribed persons, with the exception of MPs and Ministers.
- The reports will be laid before Parliament as well as published on individual organisations websites as a further mechanism for transparency.

We do not expect to achieve a step change in cultural attitudes to whistleblowing with this measure alone. We hope that this together with the other measures we are taking forward <sup>1</sup> along with leadership from employers and prescribed persons will deliver the changes needed to support people speaking out about the concerns they have.

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<sup>1</sup> Measures listed in the Government's response of June 2014  
<https://www.gov.uk/government/consultations/whistleblowing-framework-call-for-evidence>

## Next Steps

A draft outline of Regulations that could be made under the power in the Small Business Enterprise and Employment Bill is published alongside this response, to assist Parliament's scrutiny of the Bill. The Government will continue to develop the details of those Regulations in parallel to the Bill's passage through Parliament. Due to the timetable for the Bill, no regulations can be made under this power before the end of this Parliament.

## Introduction

As part of the Enterprise and Regulatory Reform Act 2013 we committed to reviewing the legislative framework that supports whistleblowers. We undertook a thorough exercise in 2013 to seek views and evidence as to whether the legislation could be strengthened.

The Government considered the overall framework to work well. However we acknowledged that a number of high profile issues like the Mid Staffordshire NHS Foundation Trust scandal and the financial collapse have taken place, highlighting some of the barriers that whistleblowers still face, despite the legislation being in place.

BIS found through a call for evidence held in 2013 that the confidentiality duty that binds prescribed persons, the lack of legal obligation to investigate a disclosure and lack of feedback following a disclosure means that whistleblowers do not have confidence that their reports are investigated. This is cited as a reason for the whistleblowing framework 'failing' to protect whistleblowers.

To address this, the Department of Business Innovation and Skills (BIS) has introduced a power in the Small Business Enterprise and Employment Bill to enable the Secretary of State to make regulations to require persons to report annually on whistleblowing issues.

The Department for Business Innovation and Skills published the consultation *Prescribed Bodies: Annual Reporting Requirement on Whistleblowing* document on 1 August 2014. The consultation was to determine how we will exercise a power in the Small Business, Enterprise and Employment Bill to impose a duty on 'prescribed persons' to report annually on whistleblowing reports. We sought views on the content and process for the report. The consultation period ran for 8 weeks and closed on 30 September.

This document sets out the Government's formal responses to the comments received in the consultation around the duty to report annually to all prescribed persons. The Government is grateful to all respondents for their contributions during the consultation process.

Responses were received through an online consultation tool at Citizen Space or via email using the consultation response form. Electronic copies of the consultation papers were made available via the Gov.uk website.

## Responses to the duty to report

The consultation document sought the views on the practical implication of a legal power contained in the Small Business Enterprise and Employment Bill to require certain prescribed persons to report annually on public interest disclosures (whistleblowing disclosures) that they receive. This section sets out the analysis of the responses received to each of the issues raised in the consultation document, and how the Government intends to respond in line with its commitment to develop and implement policies to make the whistleblowing framework more robust.

### Proposed content of report

**Question 1: Do you agree with the proposed content of the report? What are your reasons?**

#### Analysis of responses

We anticipated in the consultation documents that the report should cover generic information such as:

- The number of disclosures that qualify as protected public interest disclosures;
- The numbers of these that did not require any further action,
- The number of these that were referred to an alternative body;
- The number of disclosures that required further research;
- The number of investigations that led to action being taken,
- The number of cases where the issues was resolved after first contact with the employer,
- The number of organisations investigated that had whistleblowing policies in place.

We proposed this content as we believed it would provide the right level of detail that would achieve greater transparency in the way whistleblowing reports were handled by prescribed persons. This was informed by the evidence we collected in the 2013 call for evidence.

From our analysis, 70% of the respondents expressed general support for the proposed contents of the report. Overall, respondents felt there would be merit in exposing the way in which prescribed persons handle whistleblowing.

The majority of respondents believed the reports would promote consistency, transparency and accountability. Some respondents also thought that the reports had the potential to prevent further malpractice or could be viewed as an early sign for sector specific problems. However a fundamental concern expressed by most respondents was that the reports should not expose the identity of the whistleblower or the employer at the heart of a disclosure.



Of those respondents who did not support the proposed content there was a strong view that it should not be for the regulator to determine whether a disclosure is a public interest disclosure, and that the requirements of the report would put this responsibility upon them.

Respondents also expressed concern about a purely statistical report. There is a concern that the numbers alone would not add any value or have any impact on addressing the barriers whistleblower face.

For this reason, there was a strong view that the reports needed an accompanying narrative which could provide an indication of how well whistleblowing arrangements are working and how prescribed persons are performing.

There was also concern that the greater breadth of detail required, the greater the risk that the duty would be too prescriptive, resulting in some bodies being asked for information that was beyond their statutory remit to collect.

## **The Government Response**

The responses confirm that the content of the report we proposed was heading in the right direction, that its intention was right but that it might be too prescriptive.

We also recognise some of the issues with the proposed content in that not all of the content we had proposed was relevant to all listed bodies. Furthermore, some of the questions would place too much of a burden on prescribed persons. For example, by placing a responsibility on a prescribed person to decide if an issue is a public interest disclosure, which is the role of an Employment Tribunal Judge.

We agree with respondents that the statistical information would have less impact and less application without an accompanying narrative. Therefore we plan to require the reports to include this.

Confidentiality was always an important factor for the Government. We will ensure that the Regulations retain a confidentiality clause to explicitly protect identities from being revealed.

A final point we take from the feedback is that the content needs to be more flexible, with options for prescribed persons to add in information that they believe would be helpful or relevant.

As set out in the outline regulations at annex A, we intend reports to cover the following:

- An explanation of the functions, objectives and statutory powers of the body producing the report;
- The amount of concerns that have been raised with that body in a twelve month period;
- The amount of concerns that can be reasonably identified as whistleblowing;

- Commentary on what types of action were taken in response to whistleblowing disclosures;
- The number of disclosures where no further action was taken (unsubstantiated claims)
- Commentary on how the information from whistleblowers has impacted on the prescribed body's activity in their relevant sector.

In addition, prescribed persons may choose to supplement the report with further information that they believe would be helpful for example:

- The numbers of concerns raised where further action was taken and why this was
- The numbers of concerns that were referred to an alternative body
- How employers in the sectors they regulate / oversee respond to whistleblowing in their organisations.

The report as we envisage will be much more light touch and flexible than we were originally thinking. This will help accommodate the varying roles and remits of the prescribed persons.

The process for the report will also be the least onerous possible. To achieve this we will enable individual bodies to decide on the format of the report and whether it is embedded within existing reports or is a stand-alone report. The timing of publication will have some flexibility also.

## Scope and application of duty

**Question 2: Who should the duty to report apply to? All regulators or certain regulators. If certain regulators, which ones?**

### Analysis of responses

There were mixed views about who the duty to report should apply to. Almost 80% of those that responded to this question thought that the duty should apply to all prescribed persons. The reason for this was to ensure that the same general information was available across all prescribed persons.

Whilst the majority of respondents felt that the duty should apply to all regulators, some respondents felt that the duty to report should apply differently to regulators depending on whether they handle workforce or public complaints.

Some respondents were of the view that a different approach may be needed for regulators compared to professional bodies to reflect their different remits and statutory powers. There was also the view that the duty should exclude prescribed persons who have no remit to investigate an issue or have no remit to influence whether an organisation has a whistleblowing policy in place.

There has been some challenge about Ministers and MPs being exempt from this duty. Given MPs and Ministers are limited in what they can do directly to influence a specific case, we understand that they are likely to refer cases to the correct regulators. In which case, the disclosure will be captured within the reporting duty through the relevant regulator.

## **The Government response**

There is a clear case for applying the duty to all bodies on the list for the purposes of transparency, other than Ministers and members of Parliament. We do not believe there is a compelling argument to only apply the duty to specific bodies on the list. Particularly given the importance of achieving transparency and consistency, that has been so strongly conveyed by respondents.

Furthermore, we do not think it is too onerous to have the widest possible application, particularly since the report will be much more light touch and flexible than we originally proposed, to help accommodate the varying roles and remits of the prescribed persons.

## **Including additional information in the report**

**Question 3. Should any other information be included in the report? If Yes, what information?**

### **Analysis of responses**

As discussed on page 8, the majority of respondents supported the general contents of the report, believing that it could improve transparency and consistency in whistleblowing arrangements across prescribed bodies. Many respondents thought that collating numeric data alone would not add value and would not help address the barriers whistleblowers face. Respondents also stressed the importance of maintaining the confidentiality of both the whistleblower and the employer.

A variety of additional suggestions were received to add to the proposed contents. These included:

- Setting out what further action taken was taken following a disclosure being made
- An explanation why action was not taken
- The numbers of unsubstantiated claims received
- The number of claims that led to disciplinary action in an organisation
- The number of cases that could be linked to employment tribunal claims
- The number of repeat whistleblowers that were recorded

## The Government response

For every proposal to add additional information requirements in the report we also received strong counter arguments about the diversity of bodies on the prescribed persons list and the challenges of making the reporting requirement relevant to all. We decided that setting too many criteria and that being too prescriptive about what to include in the report would make it irrelevant to some prescribed persons. Furthermore being too prescriptive could require bodies to make significant changes to their functions and divert resources in order to collect the information for the report, which we believe would be too onerous.

We do think it would be helpful if there was an option to add relevant information to the report where each prescribed person felt it appropriate to do so.

We accept the arguments made for numbers within the reports to be accompanied by context and analysis in order for the information to have any meaning.

Based on discussions with prescribed persons throughout this consultation we think it would be a huge step forward for prescribed persons to clearly set out their policies and procedures for handling whistleblowing, making them easily accessible to the public. This is not intended to be part of the report or a mandatory requirement set by the Government. Should prescribed persons adopt this approach we believe it would have as great an impact on people's perception of transparency as a detailed annual report on whistleblowing.

Again, as set out in our response to question one, we are proposing that the regulations will require the annual report to include a wider context of any numbers provided. We will ensure that the required contents will not ask bodies to have to go beyond their statutory remit in order to provide the information.

## Publishing and accessing the reports

**Question 4: We propose that the report should be published on each organisation's websites along with general annual reports (such as accounts and performance). Do you agree? What are your reasons?**

### Analysis of responses

In the consultation we proposed that the report should be published on each organisation's website along with general annual reports. It was interesting to find that there was a very strong view that the report should be published online for ease of access, transparency and simplicity. (In fact almost 80% of respondents thought it should be published on line). Accessibility was a key criteria that both prescribed persons and the wider whistleblowing community identified as paramount to promoting transparency and to ensuring the reports had any impact.

During the consultation period and subsequent discussions with stakeholders it became clear that many prescribed persons did not already set out online information about whistleblowing and how it handled disclosures. It was a general view that doing this could go a long way to help demonstrate that prescribed persons have procedures in place as a matter of best practice.

## **The Government Response**

We agree with the views expressing the benefits of publishing information on line for maximum accessibility. We will therefore require reports to be easily accessible online. We will not require whistleblowing policies and procedures to be incorporated within reports; however will make the recommendation in new guidance that publishing these online would be considered best practice.

However, in light of concerns about the reporting process being too onerous for the varying bodies listed as prescribed persons, we plan to have some flexibility in terms of timing of reporting. We also intend to allow for flexibility on whether it is most appropriate to embed the information within existing organisational reports (such as annual reports) or whether information is published as stand-alone report. This point is discussed in more detail below.

**Question 5. Should this report be contained within existing annual reports of your organisations / the organisation concerned? Or as a stand-alone report? What are your reasons?**

### **Analysis of responses**

The consultation responses to this question reveal differing views on whether the report should be embedded in existing annual report or as a stand-alone report. The majority felt it should not be a stand-alone report; but rather it should appear in existing reporting mechanisms such as the annual report. This was to reduce bureaucracy or duplication as well as to allow for scrutiny of the organisation's overall performance. 55% of respondents thought that the report should be in existing organisation reports.

Some respondents (20%) also argued for a specific stand-alone report. This was mainly so that the reports would receive maximum exposure and be most accessible. Some respondents also believed that a stand-alone report would be least bureaucratic.

## The Government response

Given the mixed responses to this question and the strong message that prescribed bodies have varying ways of working, we propose that the report should be placed online for ease of access and that the prescribed persons will be able to choose whether they embed this as part of existing reporting processes or publish it as a stand-alone report. We also propose that prescribed persons send their reports to BIS. The various reports will then be pulled together, with some high level analysis to give context and published in one place online.

## Reporting to Parliament

**Question 6. Should this information be reported to Parliament? If yes, do you foresee any problems with this? If so, what are these?**

### Analysis of responses

We sought views on whether the information should be made available for parliamentary scrutiny and if so, whether respondents could anticipate any problems with this. 55% of all respondents thought that the process should involve a report to parliament but few of these respondents gave a supporting reason for this opinion. The only reasons provided were that it allowed for external scrutiny and an additional level of accountability.

15% of all respondents did not support this view. They provided some robust reasons why reports should not be submitted to parliament. These included:

1. There would be constitutional difficulties with devolved bodies reporting to the UK Government
2. There would be the potential of loss of anonymity for whistleblowers.
3. The nature of the information proposed for including in the reports could lack context for parliament to assess, therefore the information could be misinterpreted by Parliament.
4. Comparisons across the different bodies could draw misleading or irrelevant conclusions.
5. It could create duplication for bodies who already submit reports to Parliament.
6. The task of generating a single report for Parliament would be so large that the time delay for reaching parliament could mean the information is less relevant.

## **The Government response**

The majority of respondents were of the view that the information should be provided to Parliament for additional scrutiny. The Government does acknowledge the concerns raised around reporting to Parliament. For example, we recognise that sector specific trends could be more useful and these could be made if information was published on organisations' websites. Therefore we will require each organisation to publish their reports online, in addition to the reports being consolidated by BIS into a single report which will be laid before Parliament. BIS will bear in mind the concerns around anonymity and information being taken out of context when compiling this report.

### **Timing of publication**

**Question 7: At what point of the year would it be most practical and appropriate to publish such information? (For example end of the financial year). What are your reasons for this timing?**

### **Analysis of responses**

We sought views from the consultation on the appropriate timing for publishing the report.

Of those that responded to the question about when a report should be published, 80% thought it should be in line with existing reports such as financial reports or general annual reports, just over 40% of these stated that it should be part of financial reports.

This was to reduce bureaucracy, and to ensure efficiency and consistency.

### **The Government Response**

We have noted the comments about aligning with existing report timings. We have therefore decided that prescribed persons will be required to produce annual reports each year about disclosures made with them by whistleblowers. There will be some flexibility on timing when this should be made available by.

## Considering burdens of the duty on prescribed persons

**Question 8: Does your organisation already collect and report on the data required by this policy change? If yes, what data does your organisation already collect?**

### Analysis of responses

We know from the responses that some of the bodies listed on the prescribed person list already collect data about whistleblowing disclosures and report them in some form. Not all respondents answered this question. Of those that did, just under half said they already collected some whistleblowing data. This included the type of the person who raised a concern, the nature of the concern, the outcome of any investigation and the number of concerns raised where had no further action was taken. So the type of information that organisations already collect and report on is not dissimilar to the proposed content of the report.

The prescribed persons who took part in the consultation explained that they generally do not differentiate public interest disclosures from general complaints. Their interest is the information that is reported to them, rather than whether the person reporting it was a worker. Furthermore, many contacts they receive are anonymous and in these cases they would not know whether it was a worker or any other person providing the information. For these reasons it would be difficult to collate accurate numbers of whistleblowing disclosures made in any given period.

### The Government response

Firstly, although some prescribed persons do not collect data on whistleblowing, we do not believe it unreasonable to expect them to gather some intelligence on whistleblowing and the issues raised by whistleblowing within their sectors. We believe this fits within their remit as a prescribed person. Secondly, the responses have confirmed to us that a reporting duty will not require a huge increase in resources for prescribed persons to deliver. Particularly as some are already collecting this kind of data.



**Question 9: Considering additional burdens that could be created by this policy change: In a year, how much staff time would your organisation need to comply with this change? For those who can provide staff time: How did you work out the staff time needed to comply with this change? In addition to staff time, would your organisation have to incur any monetary expenditure to comply with this change? For organisations that would have to incur monetary expenditure: In a year, how much monetary expenditure would your organisation need to incur to comply with this change? For those who can provide an expenditure figure: How did you work out the expenditure needed to comply with this change?**

### **Analysis of responses**

Very few people responded to these questions. 15% of respondents stated that this duty would require additional resources. The majority were of the view that the impact of the reporting requirement would be minimal as the work would be integrated into the annual reporting cycle. Some stated that the reporting requirement would create an additional burden on prescribed persons, such as cost. We had very little data on what additional expenditure and staff time this duty would incur. There was not enough to draw any conclusions about overall impacts

### **The Government response**

Given that the most of the respondents who did provide an answer to this question felt the additional impact would be minimal, we consider the duty to impose minimal additional burdens on prescribed persons.

### **Assessing the potential impact of the reports**

Question 10: Do you believe that providing information in an annual report will:

- a) increase confidence that reports of wrong doing are handled correctly?
- b) Dispel the belief that the whistleblowing framework is failing whistleblowers?
- c) Improve the consistency of information across prescribed persons?

### **Analysis of responses**

We received a very positive response about the impact the reporting requirement could have on both consistency in the way prescribed persons handle whistleblowing and how it might improve the confidence that reports of wrong doing are looked into. There was less

agreement that the reporting requirement would dispel the belief that the whistleblowing legislation is failing whistleblowers.

55% of respondents believed that the duty would encourage consistency across prescribed persons and improve transparency.

65% of all respondents thought the measure would increase the confidence in prescribed persons and the way they handled whistleblowing.

30% thought that the measure would dispel the belief that the whistleblowing framework was failing whistleblowers, but equally 30% thought it would not.

### **The Government response**

The feedback confirms to us that this measure will go some way to improving the transparency and consistency in the way whistleblowing disclosures are handled. It also confirms that it will go some way to reassuring whistleblowers that the information they provide is acted upon. Equally it will expose where it is not.

We are aware that this is one small part in changing cultural attitudes around whistleblowing and in isolation it will not achieve a step change. However in addition to the duty to report annually, we are taking forward other changes to help achieve this change. This includes creating new comprehensive guidance to assist those people who blow the whistle, guidance for employers and regulators on handling whistleblowing as well as creating a non-statutory code of practice for employers.

Furthermore, we are looking at ways to improve how the Employment Tribunal Service can refer disclosures to the relevant regulators, and exploring how we can extend the legislation to other groups of people that do not fall within the current definition of worker.

## Further comments about the implementation of the duty to report

Question 11. Do you have any further comments or suggestions about the implementation of this duty to report?

### Analysis of responses

This question generated a huge number of wide ranging comments. Many respondents used this section to stress the issues they felt most strongly about, such as:

- the pitfalls of a purely statistical report and the need for context and analysis
- maintaining confidentiality of the whistleblower and employer
- ensuring the prescribed person would not be expected to determine whether a concern was a public interest disclosure
- concerns about comparing data across prescribed persons with different remits and functions
- confirming that this measure alone would not address all the barriers whistleblowers face

Many respondents stressed the importance of getting the terminology and language right, so that the expectation of prescribed persons was clear. We have noted the definite need for clear guidance to help prescribed persons comply with this requirement.

### The Government response

Since many of the points made in response to question 11 related to the questions throughout the consultation, we have incorporated the answers at the relevant points throughout this document.

The additional advice received such as ensuring the terminology is clear and helpful has been taken on board and will also shape the implementation of this measure.

## Conclusion

We have received a wealth of information through the responses to these questions. Much of it has confirmed our views and some have also challenged us to make changes to our proposed format of the report. We are grateful for the time people took to respond to the consultation, as it has provided a sound basis for designing the secondary regulation to deliver this policy.

Overall, there is clear support for the reporting duty, with over 70% of the respondents agreeing with the proposed contents of the report and expressing general support for this legislative measure. There was a general consensus that the duty had the potential to partially address confidence in prescribed persons through increased transparency in the way they are handled. We also believe that it will provide an opportunity to clarify the expectations whistleblowers have of prescribed persons.

It should be evident in this response that the information we received through written responses and discussions we held with stakeholders throughout the consultation period has informed our thinking and is shaping the drafting of the regulations.

With this Government Response we are publishing a draft outline of regulations, to assist Parliament's scrutiny of the power contained in the Small Business, Enterprise and Employment (SBEE) Bill, as it goes through the Lords stages. The Government will continue to develop the details of those regulations in parallel to the Bill's passage through Parliament. Due to the timetable for the Bill, no Regulations can be made under this power before the end of this Parliament.

As set out at the beginning of this response, the Government's response to a call for evidence in June 2014 identified a number of measures to be implemented in order to ensure the whistleblowing framework is more robust going forward. This is just one of those.

## Annex A: Outline regulations

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### DRAFT STATUTORY INSTRUMENTS

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**2015 No. 0000**

## TERMS AND CONDITIONS OF EMPLOYMENT

### The [Draft] Prescribed Persons (Report on Disclosures of Information) Regulations 2015

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

**NOTE:** *These regulations are an **outline** of proposals for secondary legislation arising out of clause 147 of the Small Business, Enterprise and Employment Bill ('the Bill'). They have been prepared for the purpose of assisting with scrutiny of the Bill in the House of Lords and for the Government Response to the consultation on the implementation of this measure.*

The Secretary of State, in exercise of the powers conferred by section 43FA(1) of the Employment Rights Act 1996<sup>(2)</sup>, makes the following Regulations.

A draft of these Regulations was laid before Parliament in accordance with section 236(3) of the Employment Rights Act 1996<sup>(3)</sup> and approved by a resolution of each House of Parliament.

#### Citation, Commencement and Definitions

1.—(1) These Regulations may be cited as the [Draft] Prescribed Persons (Report on Disclosures of Information) Regulations 2015.

(2) These Regulations come into force on [INSERT DATE].

(3) [Regulations can only be laid in Parliament after the Bill receives Royal Assent. This would take place in the next Parliament.]

(4) In this Order—

“relevant prescribed person” means a person prescribed under the Public Interest Disclosure (Prescribed Persons) Order 2014<sup>(4)</sup> apart from a member of the House of Commons, Ministers of the Crown, Welsh Ministers or Scottish Ministers.

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<sup>(2)</sup> 1996 c.18. Section 43FA was inserted by the Small Business, Enterprise and Employment Act 2015 (c.[X]), section 144(3)(a).

<sup>(3)</sup> Section 236(3) was amended by the Small Business, Enterprise and Employment Act 2015, section 144(3)(a).

<sup>(4)</sup> S.I. 2014/2418 amended by S.I. 2014/3294.

**Annual report on disclosures of information**

2.—(1) [In relation to each financial year] the relevant prescribed person must make a report on disclosures of information.

(2) The report shall be made available before [1st October in the financial year following that to which it relates].

**Content of Report**

3.—(1) The report must include—

- (a) the number of disclosures of information made to the relevant prescribed person in [relevant financial year];
- (b) the number of disclosures of information that are made by a worker to the relevant prescribed person where the [relevant prescribed person reasonably believes] the disclosure of information is a qualified disclosure within the meaning of section 43B of the Employment Rights Act 1996 in that period;
- (c) the number of those disclosures of information where the relevant prescribed person decided to take no further action in that period;
- (d) [*Further consideration will be given to any other issues which the relevant prescribed person should report upon.*]

(2) The report must also explain the functions, objectives and statutory powers (if it has any) of the relevant prescribed person.

(3) The report must also describe in general terms—

- (a) the [type of action] that has been taken in respect of disclosures of information and the outcome of such action;
- (b) how information disclosed to it has [impacted on the relevant prescribed person's ability to perform its functions and meet its objectives].

(4) Nothing in this paragraph requires the disclosure of any information in the report that would enable either of the following to be identified—

- (a) a worker who has made a disclosure of information; or
- (b) an employer or another person in respect of whom a disclosure of information has been made.

**Manner of Publication**

4.—(1) The Relevant Prescribed Person must publish the report—

- (a) in such manner as the Relevant Prescribed Person considers appropriate for bringing it to the attention of the public, and
- (b) by placing it on [its website or on an appropriate website].

(2) Where a person exercises the functions of two or more Relevant Prescribed Persons it may publish a single report relating to all those functions.

Date Name  
 Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs  
 Department for Business, Innovation and Skills

## Annex B: Distribution of Responses

<b>Type of Organisation</b>	<b>Response</b>
Business representative organisation/trade body	<b>10</b>
Charity or social enterprise	<b>1</b>
Individual	<b>2</b>
Large business (over 250 staff)	<b>3</b>
Legal representative	<b>1</b>
Local Government	<b>2</b>
Regulator or Prescribed body	<b>24</b>
Trade union or staff association	<b>2</b>
Other (please describe) Academics	<b>4</b>
<b>Total</b>	<b>49</b>



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Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000  
Email: [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk)

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