



Department  
for Business  
Innovation & Skills

**SMALL BUSINESS, ENTERPRISE  
AND EMPLOYMENT BILL**

Prescribed persons: annual  
reporting requirements on  
whistleblowing

AUGUST 2014

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# Prescribed Persons: Annual Reporting Requirements on Whistleblowing

This consultation has been issued to seek 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.

It is relevant to those bodies listed in the Public Interest Disclosure (Prescribed Persons) Order 1999. It will also be relevant to those organisations that take an interest in whistleblowing legislation, which was introduced by the Public Interest Disclosure Act 1998 and is contained in the Employment Rights Act 1996.

The Government took steps in March this year to add Members of Parliament (MPs) to the list of prescribed persons; however the duty to report will not apply to MPs or Ministers of the crown.

Issued: 1 August 2014

Respond by: 30<sup>th</sup> September 2014

Enquiries to: Louise Evatt

0207 215 1605

[louise.evatt@bis.gsi.gov.uk](mailto:louise.evatt@bis.gsi.gov.uk)

1 Victoria Street, London SW1H 0ET

## 1. Executive Summary

The Government committed during the passage of the Enterprise and Regulatory Reform Bill 2013, to review the whistleblowing framework through a call for evidence and to consider any cases for change. At the time of publication, the Government considered the overall framework to work well. However since its introduction in 1998, a number of high profile issues like the Mid Staffordshire NHS Foundation Trust scandal and the financial collapse have taken place, focussing the spotlight on whistleblowing. As such, it was deemed appropriate and timely to consider the effectiveness of the framework against the backdrop of a change in ways of working and a shifting dynamic in the labour market.

The Government carried out significant exploratory work including reviewing 78 responses and holding public discussion sessions in Edinburgh, Birmingham and London.

BIS found through the call for evidence that the confidentiality duty that binds prescribed persons and lack of legal obligation to investigate 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) is introducing a power in the Small Business Enterprise and Employment Bill to enable the Secretary of State to make regulations to require persons prescribed under section 43F of the Employment Rights Act 1996 to report annually on whistleblowing issues.

The purpose of the reporting requirement is to:

- Ensure more systematic processes across all prescribed bodies in the way public interest disclosures are handled. Thereby working towards a consistent standard of best practice for handling disclosures
- Provide greater reassurance to the whistle-blower that action is being taken by the prescribed person and as a result increase the confidence in the actions of the prescribed person

This consultation is seeking views on how the Government implements this reporting requirement. The conclusions of this consultation will shape the secondary legislation that is developed under the new power in the Small Business, Enterprise and Employment Bill.

## 2. How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

You can reply to this consultation online at [insert survey monkey link].

The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/whistleblowing-prescribed-persons-reporting-requirements> (until the consultation closes on 30 September 2014). The form can be submitted online/by email or by letter or fax to:

Bertha Eson-Benjamin

Labour Markets Directorate

Department of Business, Innovation and Skills

1 Victoria Street, London SW1H 0ET

Tel: 0207 215 2350

Email: [bertha.eson-benjamin@bis.gsi.gov.uk](mailto:bertha.eson-benjamin@bis.gsi.gov.uk)

You may make printed copies of this document without seeking permission.

BIS consultations are digital by default but if required printed copies of the consultation document can be obtained from:

BIS Publications Orderline

ADMAIL 528

London SW1W 8YT

Tel: 0845-015 0010

Fax: 0845-015 0020

Minicom: 0845-015 0030

<https://www.gov.uk/government/publications?departments%5B%5D=department-for-business-innovation-skills>

Other versions of the document in Braille, other languages or audio-cassette are available on request.

### **3. Confidentiality & Data Protection**

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

### **4. Help with queries**

Questions about the policy issues raised in the document can be addressed to:

Bertha Eson-Benjamin or Louise Evatt

Labour Markets Directorate

Department of Business, Innovation and Skills

1 Victoria Street, London SW1

Tel: 0207 215 1605

Email: [bertha.eson-benjamin@bis.gsi.gov.uk](mailto:bertha.eson-benjamin@bis.gsi.gov.uk); [louise.evatt@bis.gsi.gov.uk](mailto:louise.evatt@bis.gsi.gov.uk)

The consultation principles are in Annex A.

## 5. The proposal

As outlined in the Executive Summary, the Department is introducing a power in the Small Business Enterprise and Employment Bill to enable the Secretary of State to make regulations to require persons prescribed under section 43F of the Employment Rights Act 1996 to report annually on whistleblowing issues.

The purpose of the reporting requirement is to:

- ensure more systematic processes across all prescribed bodies in the way public interest disclosures are handled. Thereby working towards a consistent standard of best practice for handling disclosures; and
- provide greater reassurance to the whistle-blower that action is being taken by the prescribed person and as a result increase the confidence in the actions of the prescribed person.

The reports will not provide detail enabling the identity of the worker who made the disclosure or the employer to which the disclosure relates to be identified. However we anticipate that the Regulations will provide that the Reports should cover more generic information such as:

- The number of disclosures that qualify as protected public interest disclosures
- The number 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 issue was resolved after first contact with the employer
- The number of organisations investigated that had whistleblowing policies in place

This consultation is seeking views to determine how this reporting requirement should be implemented in practice.

## **Next Steps**

The outcome of this consultation will be used to inform how the Government implements the secondary legislation to require certain prescribed bodies to report annually on whistleblowing issues.

Secondary legislation will be laid in Parliament after the Small Business, Enterprise and Employment Bill receives Royal Assent in 2015



## Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

## Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone John on 020 7215 6402

or e-mail to: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 6).

## **Impact Assessment of the requirement on prescribed persons to report annually**

An Impact Assessment is not required since there is no business impact. However the consultation asks questions to understand the impact of the change on the prescribed persons.

## Response Form

**NOTE:** The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is **30/09/2014**

Name:

Organisation (if applicable):

Address:

Please return completed forms to:

email: [bertha.eson-benjamin@bis.gsi.gov.uk](mailto:bertha.eson-benjamin@bis.gsi.gov.uk)

Part 1- Please tick one or more of the boxes below to give the best description of you as a respondent.

	Organisation Type
	Regulator or Prescribed body
	Local Government
	Central Government
	Legal representative
	Large business (over 250 staff)
	Medium business (50 to 250 staff)
	Small business (10 to 49 staff)
	Micro business (up to 9 staff)
	Business representative organisation or trade body
	Charity or social enterprise
	Trade union or staff association
	Individual member of the public
	Other (please describe)

## Consultation Questions

Part 2 - How many employees **in total** are there within the organisation in which you work?

	Employees
<input type="checkbox"/>	Over 250
<input type="checkbox"/>	50 to 250
<input type="checkbox"/>	10 to 49
<input type="checkbox"/>	up to 9

**Question 1 Do you agree with the proposed content of the report?**

A  Yes  No

**B What are your reasons?**

**Question 2 who should the duty to report apply to?**

A  All regulators  certain regulators

**B If certain regulators, which ones?**

**Question 3 should any other information be included in the report?**

A  Yes  No

**B If Yes, what information?**

**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?**

**A**             Yes                       No

**B What are your reasons?**

**Question 5 Should this report be contained within existing annual reports of your organisations / the organisation concerned?**

**A**             Yes                       No

**Or as a stand-alone report?**

**B**             Yes                       No

**C What are your reasons?**

**Question 6 should this information be reported to Parliament?**

**A**             Yes                       No

**B If yes, do you foresee any problems with this?**

Yes                       No

**C If so, what are these?**

**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).**

**B. What are your reasons for this timing?**

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

**A**             Yes                       No                       Not sure

**B** If yes, what data does your organisation already collect?

**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?**

**A.**      For those who can provide staff time: How did you work out the staff time needed to comply with this change?

**B.**      In addition to staff time, would your organisation have to incur any monetary expenditure to comply with this change?

Yes                       No

**C.**      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?

**D.**      For those who can provide an expenditure figure: How did you work out the expenditure needed to comply with this change?

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

**A) increase confidence that reports of wrong doing are handled correctly?**

Yes                       No

**B) Dispel the belief that the whistleblowing framework is failing whistleblowers?**

Yes                       No

**C) Improve the consistency of information across prescribed persons?**

Yes                       No

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

**Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.**

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply



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