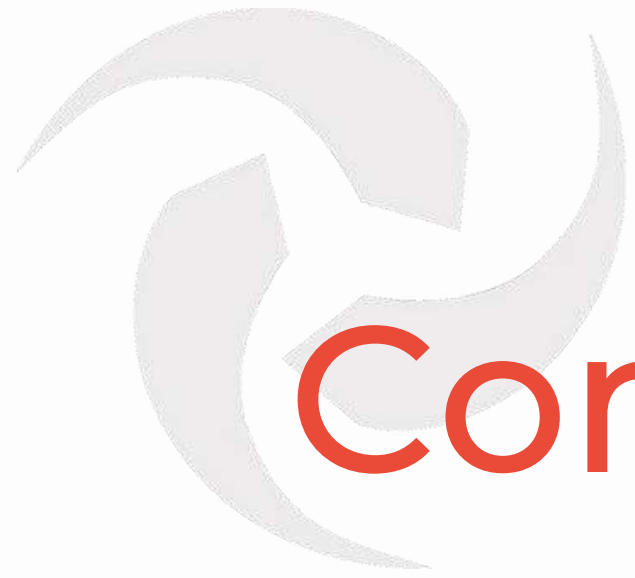




Review of Consultation Responses

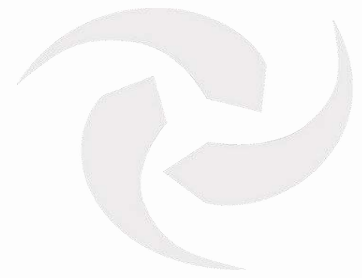
Whistleblowing to Prescribed Persons

JULY 2024



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Introduction

The Employment (Amendment) Bill 2023 completed its progress through the Branches earlier this year and now awaits Royal Assent. Among other things, the Bill includes measures to improve the legislative framework around whistleblowing. It is intended that the provisions are brought into operation in April 2025. Alongside these changes the Department has committed to reviewing the list of those referred to as 'prescribed persons' in the whistleblowing legislation.

The Employment Act 2006 sets out a number of categories of people to whom a worker can make a whistleblowing disclosure - for example to an employer or "other responsible person". Disclosures may also be made to 'prescribed persons'. Prescribed persons normally have some sort of oversight or regulatory role, so that a disclosure can be investigated and dealt with by the prescribed person.

It is important that the list of prescribed persons enables workers to raise concerns with appropriate bodies, and to have those concerns dealt with. It is therefore also important that the list is up to date and comprises as wide as possible a range of organisations which have a regulatory or oversight role.

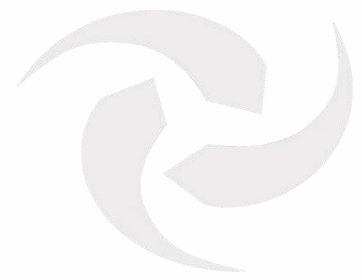
The list of prescribed persons was last updated in 2021. The consultation sought views on additions to the list. Perhaps most significantly, the consultation sought views on making Members of Tynwald prescribed persons.

At the beginning of 2024, the Department for Enterprise undertook a consultation on prescribed persons for whistleblowing over 8 weeks that received a total of 55 responses.



6 responses were received from organisations including the following:

- Isle of Man Financial Services Authority
- BCS (Isle of Man) Ltd
- Douglas Borough Council
- Manx Utilities
- Isle of Man Law Society



Question 1 Responses

“Do you think that the medical regulatory bodies listed above should be added to the list of prescribed persons for the Isle of Man?”

Since 2021, the Department has engaged with a number of professional medical regulatory bodies based in the UK, who also have responsibility for medical professions in the Isle of Man.

The Department intends to specify these bodies as prescribed persons in a future update to the Public Interest Disclosure (Prescribed Persons) Order 2021.

The listed medical regulatory bodies were the: Health and Care Professions Council; General Medical Council; General Dental Council; General Optical Council; General Pharmaceutical Council; and the General Osteopathic Council.

Option	Total number of responses	Percent
Yes	49	89%
No	1	2%
Not Answered	5	9%

An overwhelming majority of 89% of respondents agreed that medical regulatory bodies that were listed should be added to the Prescribed Persons list for the Isle of Man.

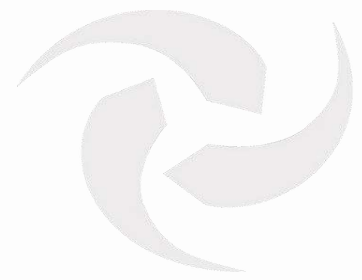


35 respondents also provided further comment to explain their answer to the question.

Reasons in support of adding these groups to the list of prescribed persons included:

- the possibility of widening the scope for reporting.
- enhancing the ability to safeguard medical patients.
- assisting in streamlining processes.
- could provide a co-ordinated approach to reporting and investigation.
- could provide assurance to those who lack faith in the current system.
- could hold specialist knowledge.

A number of comments also highlighted a need for the Nursing and Midwifery Council to be included in the list. Other comments noted the requirement for an authority to investigate whistleblowing cases whilst also noting the need for individuals to be able to access direct and impartial support from those on the Prescribed Persons list.



Question 2 Responses

“Do you think that Members of the House of Keys should be specified as prescribed persons?”

Option	Total number of responses	Percent
Yes	31	56%
No	18	33%
Not Answered	6	11%

The question received a majority in favour of recognising Members of the House of Keys (MHKs) as Prescribed Persons. However a significant proportion of respondents were against this proposal.

The comments highlighted the mixed response towards the proposal. Arguments against the proposal included the following reasons:

- Concerns regarding Members’ degree of independence
- There would be a risk of politicization of the process;
- As the Island is relatively small, confidentiality is more difficult that in larger jurisdictions;
- MHKs are not qualified to hear and progress complaints as prescribed persons;
- MHKs have no powers to investigate disclosures;
- MHKs do not have the same resources as MPs in the UK.



Arguments in favour of the proposal included the following reasons:

- Comparable responsibility in other jurisdictions such as the UK
- It would provide more options to potential whistleblowers.
- MHKs already have a duty to act in the public interest.
- Being a prescribed person does not require that the person has to have exhaustive knowledge of the issue being reported, they only need to know how to progress this and this could be learnt.
- In many cases, these representatives are already contacted by potential whistleblowers to raise their concerns. If MHKs are prescribed persons, they can act in a manner that is safe for all parties and be protected.



Question 3 Responses

“Do you think that all Members of Tynwald should be specified as prescribed persons?”

Option	Total number of responses	Percent
Yes	27	49%
No	23	42%
Not Answered	5	9%

As an alternative to the proposal that MHKs should be prescribed persons, this question sought views on all Members of Tynwald being specified as Prescribed Persons. This would include Members of the Legislative Council. This question received a much more mixed response in comparison with Question 2.

Arguments in favour of the proposal noted the following:

- Similar to the arguments in favour of Question 2, it was commented that Tynwald members are already approached with whistleblowing concerns anyway, regardless of whether they are prescribed persons or not.
- It would provide a more extensive list for individuals to whistleblow to, which was noted as important due to the relatively small number of regulatory bodies on the Island.
- Tynwald members would provide good oversight to ensure policies are adhered to and may consequently lead to fewer cases reaching the Employment Tribunal stage.
- It would reduce barriers to reporting whistleblowing concerns.



General comments noted the requirement for strict regulations and education to all members if this proposal were to be progressed.

Arguments against the proposal noted the following:

- Members of Tynwald may not be entirely independent.
- This could create some cross over in the remit of an MHK and MLC.
- Could compromise independent decision making in legislative processes.
- Potential to blur responsibility between legislation and safeguarding.
- Concerns regarding impartiality.
- May create additional demands on current resources and time sensitivities.
- There are more appropriate groups that could be add to the Prescribed Persons list or more appropriate individuals to approach with Whistleblowing concerns.
- There is a perceived lack of demand for an increase in numbers of Prescribed Persons.
- General lack of trust.
- Lack of knowledge regarding the process.

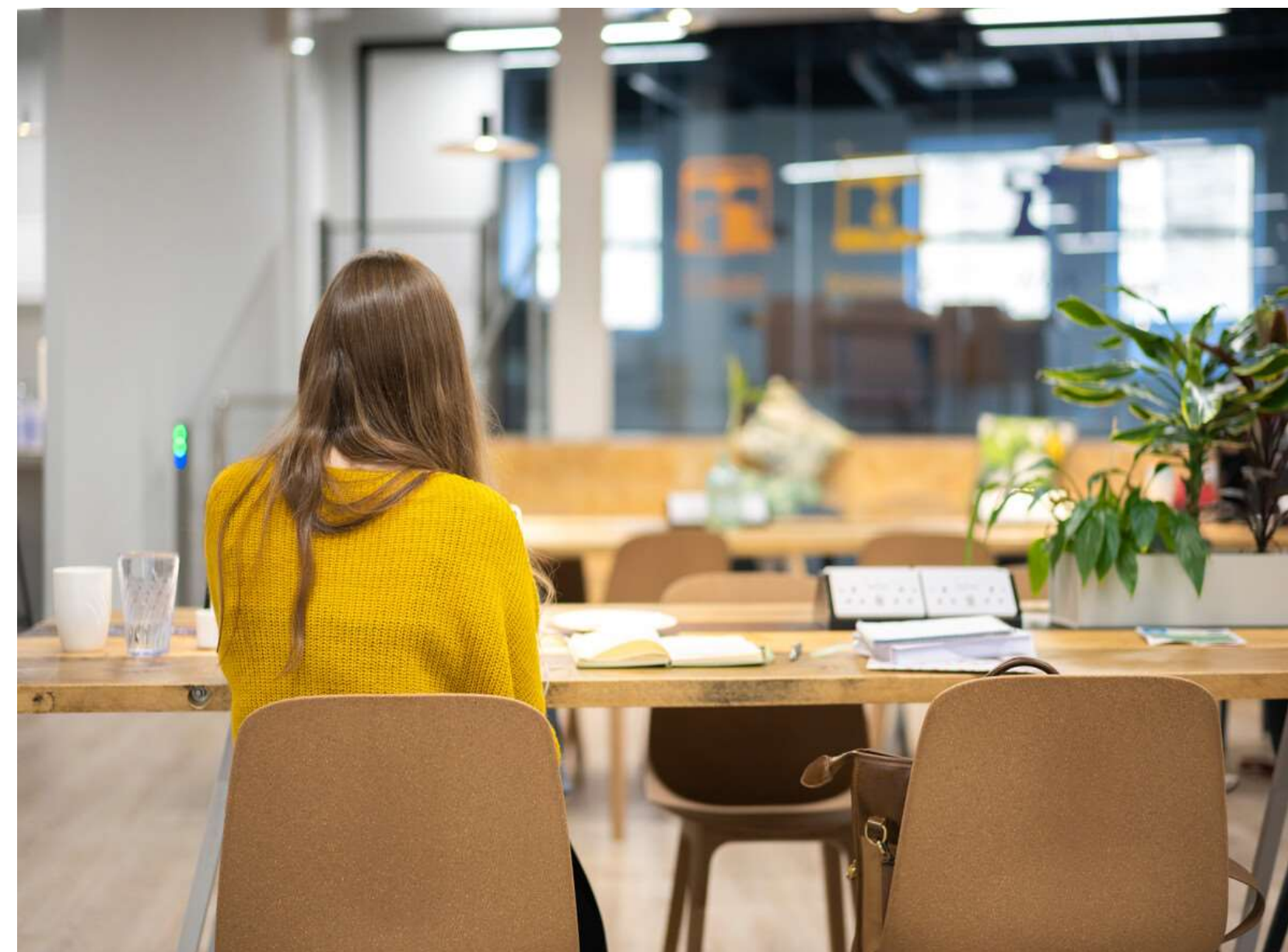
Question 4 Responses

“Are there any other persons, organisations or bodies that should be added to the list of prescribed persons?”

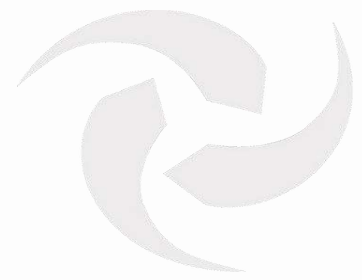
Option	Total number of responses	Percent
Yes	32	58%
No	18	33%
Not Answered	5	9%

Respondents provided the following suggestions to answer the question. Some bodies suggested are already prescribed persons. However other suggestions included professional bodies, for example in science, engineering and IT and regulatory bodies.

Significantly, the response from the Tynwald Auditor General suggested that the Auditor General should be added to the list. The Department for Home Affairs suggested adding the Department as a prescribed person in relation to enforcement of the Fire Precautions Act 1975. In addition the Isle of Man Financial Services Authority requested that alter their functions on the Prescribed Persons list to also include “Matters relating to bank recovery and resolution under the Bank (Recovery and Resolution) Act 2020”. The Department for Enterprise will explore this suggestion.



The Department will consider all the suggestions in preparation for submission of an Order to Tynwald which will add bodies to the prescribed persons list.



Question 5 Responses

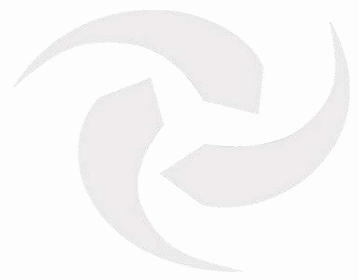
“Do you have any other comments on prescribed persons?”

Comments largely echoed previous comments made in response to the other questions. These included:

- Prescribed persons should be independent, qualified and experienced.
- The Department must ensure proper process and guidelines are in place.
- The nature of the Island is that confidentiality can sometimes be a concern.
- If groups lack investigatory powers, more thought must be given before making whole groups prescribed persons.

Responses included a suggestion that Members of Tynwald could be listed as independent arbiters to the process.





Next Steps

Question 1 - Adding medical regulatory bodies to the list of prescribed persons

There was wide support for adding the UK medical regulatory bodies to the list of prescribed persons, and adding them to the list will reinforce the whistleblowing framework in the Isle of Man. The Department has been liaising with those regulators and with Manx Care to ensure that practical arrangements are put in place to support the regulators operating as prescribed persons for the Isle of Man.

Some of the responses questioned why the Nursing and Midwifery Council (NMC) was not on the list of the bodies to be added. The Department is currently working with the NMC and Manx Care to have NMC operate as a prescribed person in the Isle of Man.

Questions 2 and 3 – Adding MHKs/Tynwald members to the list of prescribed persons

Questions 2 and 3 sought views on adding either MHKs to the list of prescribed persons or adding all Tynwald members. Though a majority of the respondents supported adding MHKs and similarly adding Tynwald members, a number of issues were raised by Tynwald members themselves.

It is of particular importance to note that in response to the consultation the Tynwald Standards and Members Interests' Committee published, in February 2024, a short report which considered the issues around MHKs or Tynwald members being prescribed persons. The report made no recommendation but it raised a number of issues in relation to MHKs/Tynwald members being specified as prescribed persons.

On the one hand, whistleblowing to Tynwald members may already qualify as a protected disclosure in some circumstances under section 55 and 56 of the Employment Act 2006. Individuals may be more likely to make a disclosure to a Tynwald member given their public status.

On the other hand the Department accepts that there are good reasons why MHKs/Tynwald members should not be prescribed persons. The feedback to the consultation, and the Tynwald report, set out some of those reasons. For instance, the Department considers that persons are normally prescribed as those to whom a whistleblowing disclosure should be made because those persons (or bodies) have existing powers to deal with a disclosure, and those persons are prescribed for those issues alone. For example, the Department for Enterprise is a prescribed person for the purposes of any disclosures about payment of the minimum wage because the Department has powers to investigate breaches of the minimum wage under the Minimum Wage Act 2001. In contrast there is no statutory framework which sets out how Tynwald members would deal with a whistleblowing disclosure, and Tynwald members have no statutory powers to deal with such disclosures. Practically speaking, it is likely that the only thing a Tynwald Member would be able to do would be to pass such a disclosure to another prescribed person that had specific powers to deal with the issue.

In addition, Tynwald members do not have the same office resources that MPs in the UK benefit from, and, given that many Tynwald members have roles within the Government, e.g. Ministers, Political Members or Board Members, Tynwald members may find themselves conflicted in dealing with protected disclosures.

For the reasons above the Department does not intend to add either MHKs or all Tynwald members to the list of prescribed persons, but will engage with the Clerk of Tynwald's office to ensure that adequate guidance was made available to Tynwald Members in respect of Whistleblowing procedures.

Question 4 – Adding any other bodies to the list of prescribed persons

As previously stated, the Department will consider further the suggestions for bodies to be added to the current list and will bring forward an updated Order for approval by Tynwald in autumn 2024.

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