

WHISTLEBLOWING TO PRESCRIBED PERSONS: A CONSULTATION

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Isle of Man
Government

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Introduction

The Department for Enterprise introduced the Employment (Amendment) Bill to the House of Keys in June 2023. Among other things, the Bill includes measures to improve the legislative framework around whistleblowing.

Alongside these changes the Department has committed to reviewing the list of those referred to as “prescribed persons” in the whistleblowing legislation.

Prescribed persons are persons (or bodies) to whom a worker can make a whistleblowing disclosure, in addition to those already set out in the Employment Act 2006. Prescribed persons normally have some sort of oversight or regulatory role.

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. This consultation seeks views on additions to the list. Perhaps most significantly, the consultation seeks views on adding Members of the House of Keys.

About the consultation

Please note that the Department will assume, unless you tell us otherwise, that you **do not** object to your response or the name of your organisation (or your own name if you are responding as an individual) being made public. If you want all or any part of your reply to be treated as confidential, then please indicate this clearly in your reply.

The consultation period ends on **1 March 2024**.

Following consultation, the Department will:

- review and evaluate comments received from consultees; and
- publish a review of the comments received; and
- Set out the next steps for any legislative changes.

Section 1: Background

Protected disclosures

What is known colloquially as whistleblowing is referred to in the Employment Act 2006 (“the Act”) as a protected disclosure. Protected disclosures, including those made to prescribed persons, are covered by Part IV of the Act, which sets out the legal framework for protected disclosures in the Isle of Man.

In essence, the legislation seeks to discourage ill-treatment of workers who raise concerns about serious issues of public interest by enabling a worker to make a claim to the Employment and Equality Tribunal if he or she has been subjected to detriment or dismissal by their employer for making a protected disclosure.

Section 50 of the Act sets out what qualifies as a protected disclosure. The disclosures qualifying for protection are any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following —

- (a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject,
- (c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- (d) that the health or safety of any individual has been, is being or is likely to be endangered,
- (e) that the environment has been, is being or is likely to be damaged, or
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

The Act sets out a number of ways in which a person can make a protected disclosure. A protected disclosure can be made to:

- the worker's employer;
- a person other than his or her employer whom the worker reasonably believes exercises responsibility for and has legal control over the conduct of the person who is responsible for the relevant failure;
- a legal adviser; or
- the Public Services Commission

There are different conditions for making a qualifying protected disclosure to the various individuals and bodies above, and a disclosure must meet those conditions in order for a complaint by a worker of detriment or dismissal by his or her employer to be successful.

There is also provision to make a protected disclosure “in other cases”. This provision does not specify a particular person or body to whom such a disclosure would be made, but is intended,

for example, to cover disclosure to the public (for instance, through the media). However there are attached to such a disclosure more onerous conditions that the whistleblower must meet in order to qualify for protection.

In relation to prescribed persons, the Act provides:

- "(1) A qualifying disclosure is made in accordance with this section if the worker —*
- (a) makes the disclosure in good faith to a person prescribed by an order made by the Department for the purposes of this section, and*
 - (b) reasonably believes —*
 - (i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and*
 - (ii) that the information disclosed, and any allegation contained in it, are substantially true.*
- (2) An order prescribing persons for the purposes of this section may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed."*

The UK has a whistleblowing framework very similar to that in the Isle of Man. The UK's guidance on prescribed persons states:

"The role of a prescribed person is to provide workers with a mechanism to make their public interest disclosure to an independent body where the worker does not feel able to disclose directly to their employer and the body might be in a position to take some form of further action on the disclosure. A worker will potentially qualify for the same employment rights as if they had made a disclosure to their employer if they report to a prescribed person."

Prescribed persons are normally persons or bodies with regulatory or other responsibility for a particular issue. The way in which the system is intended to work in practice is that, if a worker wishes to make a disclosure about, for example, his or her employer not paying the minimum wage, he or she could make a disclosure to the Department for Enterprise, as the Department is responsible for enforcement of the minimum wage. Such a disclosure would be a protected disclosure, as the Department for Enterprise is a prescribed person in relation to the minimum wage. As the Department is responsible for minimum wage enforcement it has powers to investigate and deal with a breach of the minimum wage.

An important point is that prescribed persons have no role in adjudicating a complaint as to how the whistleblower has been treated by his or her employer as a result of blowing the whistle. The issue of whether the whistleblower has suffered detriment or dismissal as a result of blowing the whistle must be taken up with the employer, and ultimately a complaint about this may be made to the Employment and Equality Tribunal. Neither does the Act nor the Prescribed Persons Order give any special powers to prescribed persons to deal with protected disclosures. A prescribed person can therefore only utilise its pre-existing powers to investigate and deal with protected disclosures.

The current list of prescribed persons is specified in the [Public Interest Disclosure \(Prescribed Persons\) Order 2021](#). The list of bodies can be found in the Annex to this consultation.

It should be noted that the Employment (Amendment) Bill 2023 was introduced to the House of Keys in June 2023 and, among other things, seeks to make a number of changes in relation to the protected disclosure framework. In relation to prescribed persons the Bill introduces powers to require certain prescribed persons to provide an annual report of certain kinds of information on protected disclosures. This reporting requirement already exists in the UK. The UK's guidance states:

"The aim of this duty is to increase transparency in the way that whistleblowing disclosures are dealt with and to raise confidence among whistleblowers that their disclosures are taken seriously. Producing reports highlighting the number of qualifying disclosures received and how they were taken forward will go some way to assure individuals who blow the whistle that action is taken in respect of their disclosures."

Section 2: Issues

Medical regulatory bodies

Since 2021 the Department has engaged with a number of professional medical regulatory bodies based in the UK, but which 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. These bodies are:

- the Health and Care Professions Council;
- the General Medical Council;
- the General Dental Council;
- General Optical Council;
- General Pharmaceutical Council; and
- General Osteopathic Council.

It should be noted that the above bodies are currently prescribed persons in the UK.

Question 1: Do you think that the medical regulatory bodies listed above should be added to the list of prescribed persons for the Isle of Man? Please give reasons for your answer.

Members of the House of Keys/Members of Tynwald

In the UK Members of the House of Commons are also specified as prescribed persons. Unlike most prescribed persons, in the UK a disclosure by an individual to a Member of Commons qualifies as a protected disclosure if the disclosure concerns any of the matters listed in the UK's Prescribed Persons Order.

For example, in the UK the National Society for the Prevention of Cruelty to Children (NSPCC) is a prescribed person to whom protected disclosures relating to child welfare and protection can be made. In the UK, a worker can also make a disclosure to a Member of the House of Commons about a matter relating to child welfare and protection, and that disclosure will be a protected disclosure. Similarly, the UK's Environment Agency is a prescribed person in relation to the environment, but individuals may also make a protected disclosure relating to environmental harm to a Member of the House of Commons.

The Department seeks views as to whether Members of the House of Keys should be specified as prescribed persons for the Isle of Man. An additional option is to specify all Members of Tynwald as prescribed persons for the Isle of Man.

Question 2: Do you think that Members of the House of Keys should be specified as prescribed persons? Please give reasons for your answer.

Question 3: Do you think that all Members of Tynwald should be specified as prescribed persons? Please give reasons for your answer.

Other bodies or issues and comments

The Department also seeks views as to whether there are any other persons, organisations or bodies that should be added to the list of prescribed persons.

Question 4: Are there any other persons, organisations or bodies that should be added to the list of prescribed persons?

Question 5: Do you have any other comments on prescribed persons?

Annex: List of prescribed persons for the Isle of Man

Person / Organisation and Contact Details	Functions
Attorney General	The proper administration of charities and of funds given or held for charitable purposes.
Communications Commission	<p>The provision and use of telecommunication systems, telecommunication services and telecommunication apparatus.</p> <p>Broadcasting and the provision of radio services.</p>
Department for Education, Sport, and Culture	Safeguarding children and vulnerable adults, as defined in the Safeguarding Act 2018.
Department for Enterprise	<p>The enforcement of the minimum wage pursuant to the Minimum Wage Act 2001.</p> <p>Work permits, illegal working and duties upon employees, employers and the self-employed under the Control of Employment Act 2014.</p> <p>The carrying on of employment agencies, and employment businesses pursuant to the Employment Agencies Act 1975.</p> <p>The requirement for compulsory insurance pursuant to the Employers' Liability (Compulsory Insurance) Act 1976.</p> <p>The operation of industrial and provident societies (as defined by the Industrial and Building Societies Act 1892).</p> <p>Employers' obligations to provide itemised pay statements, compliant written statements of the main terms and conditions of employment, and paid annual leave provision pursuant to the Employment Act 2006.</p> <p>Compliance with the requirements of merchant shipping law, including marine pollution, maritime safety and maritime security (other than port security).</p>

Person / Organisation and Contact Details	Functions
	Compliance with the requirements of civil aviation legislation, including aviation safety and security.
Department of Environment, Food and Agriculture	<p>Acts or omissions which have an actual or potential effect on the environment or the management or regulation of the environment.</p> <p>Matters which may affect the health of any member of the public in relation to the consumption of food (within the meaning of the Food Act 1996) and other matters concerning the protection of the interests of consumers in relation to food.</p> <p>Matters which may affect the health or safety of any individual at work, and matters which may affect the health or safety of any member of the public arising out of or in connection with the activities of persons at work.</p> <p>Matters which may affect the planning and building control processes as set out in the Town and Country Planning Act 1999 and the Building Control Act 1991.</p>
Department of Health and Social Care	<p>Matters relating to:</p> <ul style="list-style-type: none"> a) a care service and care services (as defined in Part 1 of the Regulation of Care Act 2013); b) social workers and social care workers (as defined in Part 5 of the Regulation of Care Act 2013) c) the provision and regulation of services provided under the National Health Service Act 2001; c) the regulation of: <ul style="list-style-type: none"> (I) health care professionals (as defined in section 3 of the Health Care Professionals Act 2014); (ii) registered dentists and registered dental care professionals (within the meaning of the Dental Act 1985); and

Person / Organisation and Contact Details	Functions
	<p>(iii) registered opticians and registered dispensing opticians (within the meaning of the Opticians Act 1996);</p> <p>(d) Safeguarding children and vulnerable adults (as defined in the Safeguarding Act 2018).</p>
Department of Infrastructure	<p>Matters relating to compliance with port security as required by:-</p> <p>(a) the Maritime Security Act 1995; and</p> <p>(b) legislation extending the International Ship and Port facility Security Code to the Isle of Man.</p>
Electoral Registration Officer	<p>Fraud and other irregularities relating to the annual accounts of political parties filed at the Central Registry (under section 10I of the Representation of the People Act 1995)</p>
Financial Intelligence Unit	<p>Matters relating to financial crime (as defined in section 3 of the Financial Intelligence Unit Act 2016).</p>
General Chiropractic Council	<p>Matters relating to: -</p> <p>(a) the registration and fitness to practice of a member of a profession regulated by the Council; and</p> <p>(b) Any activities not covered by (a) in relation to which the Council has functions.</p>
Isle of Man Financial Services Authority	<p>The carrying on of regulated activities (within the meaning of the Financial Services Act 2008).</p> <p>Matters relating to money laundering, terrorist financing, financing of proliferation of weapons of mass destruction, financial crime, and other serious financial misconduct, in connection with activities regulated or overseen by the Isle of Man Financial Services Authority.</p>

Person / Organisation and Contact Details	Functions
	<p>The carrying on of a designated business (within the meaning of the Designated Businesses (Registration and Oversight) Act 2015).</p> <p>Matters relating to the carrying on of insurance business or the business of an insurance manager or insurance intermediary (within the meaning of the Insurance Act 2008).</p> <p>Matters relating to the performance or conduct of auditors that are registered as recognised auditors under section 14G of the Companies Act 1982, or authorised under section 14E of that Act.</p> <p>Matters relating to collective investment schemes (within the meaning of the Collective Investment Schemes Act 2008) and administrators, asset managers, custodians or other functionaries appointed to such schemes.</p> <p>Matters relating to retirement benefits schemes (within the meaning of the Retirement Benefit Schemes Act 2000), including the management and administration of such schemes.</p> <p>Matters relating to the Isle of Man Database of Beneficial Ownership (within the meaning of the Beneficial Ownership Act 2017), including the accuracy of that database and compliance with that Act.</p> <p>Matters relating to: —</p> <p>a) the offence of insider dealing (as defined in section 1 of the Insider Dealing Act 1998), or</p> <p>b) market abuse (within the meaning of the Financial Services Act 2008).</p> <p>Matters relating to breaches of disqualification, contrary to an order or undertaking, or by an undischarged</p>

Person / Organisation and Contact Details	Functions
	bankrupt under the Company Officers (Disqualification) Act 2009.
Isle of Man Gambling Supervision Commission	<p>Matters relating to the licensing and regulation of land based and online gambling operations and compliance under: —</p> <p>a) the Online Gambling Regulation Act 2001;</p> <p>b) the Gaming, Betting and Lotteries Act 1988;</p> <p>c) the Gaming (Amendment) Act 1984;</p> <p>d) the Casino Act 1986; and</p> <p>e) In respect of the requirements of the Gambling Supervision Act 2010, including matters pertaining to its regulatory objectives in section 5 of that Act.</p> <p>Matters relating to money laundering, terrorist financing, financing of proliferation of weapons of mass destruction, financial crime, and other serious financial misconduct, in connection with activities regulated or overseen by the Isle of Man Gambling Supervision Commission.</p>
Isle of Man Information Commissioner	Compliance with the requirements of the Data Protection Act 2018 and the Freedom of Information Act 2015.
Isle of Man Office of Fair Trading	<p>Matters concerning the sale of goods or the supply of services which adversely affect the interests of consumers.</p> <p>Anti-competitive practices (within the meaning of Part 2 of the Fair Trading Act 1996).</p> <p>Compliance with the requirements of any legislation, including (not exhaustively) any consumer protection legislation, dangerous goods or public health legislation under which the Office (including its duly authorised officers) has</p>

Person / Organisation and Contact Details	Functions
	<p>enforcement (including civil sanctions) responsibilities.</p> <p>Mediation of financial services disputes under Schedule 4 of the Financial Services Act 2008.</p>
National Society for the Prevention of Cruelty to Children (NSPCC) and any of its officers	<p>Matters relating to child welfare and protection.</p>
An auditor appointed under section 3 of the Audit Act 2006.	<p>The proper conduct of public business, value for money, fraud and corruption in bodies, or by persons, whose accounts are required to be audited in accordance with the Audit Act 2006.</p>
Registrar General	<p>Fraud, and other irregularities, relating to the financial affairs of trade unions and employers' associations (within the meaning of the Trade Unions Act 1991).</p>
The Treasury	<p>Social Security benefits.</p> <p>Matters relating to occupational pension schemes and other private pension arrangements.</p> <p>The import and export of prohibited or restricted goods (within the meaning of the Customs and Excise Management Act 1986).</p> <p>Income tax.</p> <p>National insurance contributions</p> <p>Value added tax and duties of excise.</p>

