



Department
for Business
Innovation & Skills

**SMALL BUSINESS, ENTERPRISE
AND EMPLOYMENT BILL**

Prescribed persons: annual
reporting requirements on
whistleblowing

AUGUST 2014

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: Clare Padley
Organisation (if applicable): Nursing and Midwifery Council
Address: 23 Portland Place, London, W1B 1PZ

Please return completed forms to:
email: 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 |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | Regulator or Prescribed body |
| <input type="checkbox"/> | Local Government |
| <input type="checkbox"/> | Central Government |
| <input type="checkbox"/> | Legal representative |
| <input type="checkbox"/> | Large business (over 250 staff) |
| <input type="checkbox"/> | Medium business (50 to 250 staff) |
| <input type="checkbox"/> | Small business (10 to 49 staff) |
| <input type="checkbox"/> | Micro business (up to 9 staff) |
| <input type="checkbox"/> | Business representative organisation or trade body |
| <input type="checkbox"/> | Charity or social enterprise |
| <input type="checkbox"/> | Trade union or staff association |
| <input type="checkbox"/> | Individual member of the public |
| <input type="checkbox"/> | Other (please describe) |

Consultation Questions

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

| | Employees |
|----------|-----------|
| X | Over 250 |
| | 50 to 250 |
| | 10 to 49 |
| | up to 9 |

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

A Yes No

Please see our response to question 11.

B What are your reasons? Please see our response to question 11.

Question 2 who should the duty to report apply to?

A All regulators certain regulators

Please see our response to question 11.

B If certain regulators, which ones?

Please see our response to question 11.

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

A Yes No

Please see our response to question 11.

B If Yes, what information?

Please see our response to question 11.

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

Please see our response to question 11.

B What are your reasons?

Please see our response to question 11.

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

A Yes No

Please see our response to question 11.

Or as a stand-alone report?

B Yes No

Please see our response to question 11.

C What are your reasons? Please see our response to question 11.

Question 6 should this information be reported to Parliament?

A Yes No

Please see our response to question 11.

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

Yes No

Please see our response to question 11.

C If so, what are these?

Please see our response to question 11.

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).

Please see our response to question 11.

B. What are your reasons for this timing?

Please see our response to question 11.

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

A Yes No Not sure

Please see our response to question 11.

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

Please see our response to question 11.

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?

Please see our response to question 11.

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

Please see our response to question 11.

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

Yes No

Please see our response to question 11.

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?

Please see our response to question 11.

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

Please see our response to question 11.

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

Please see our response to question 11.

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

Yes No

Please see our response to question 11.

C) Improve the consistency of information across prescribed persons?

Yes No

Please see our response to question 11.

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 the opportunity to respond to this consultation. We have set out our response in this section as we feel it is better able to capture our feedback. The Nursing and Midwifery Council is the independent regulator for nurses and midwives in the UK. We exist to protect the public and do this by setting standards of education and practice for nurses and midwives. We also hold the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, we have a duty to investigate that allegation and, where necessary, take action to safeguard the health and well being of the public. We may disclose information to other regulators to consider taking action if relevant to their statutory responsibilities.

We are also named in the schedule to the Public Interest Disclosure (Prescribed Persons) Order 1999 (as amended) as a prescribed person to whom a worker may make a qualified disclosure (as set out in s.43F of the Employment Rights Act 1996) about the registration or fitness to practise of a registered nurse or midwife, or any activities which relate to function of the NMC. Anyone making such disclosures will be protected from any retribution or action from their employer. Our statutory powers to act relate mainly to concerns about individual registrants, although we do have a role in assuring quality and safety in settings through our responsibilities for education and local supervising authorities for midwifery. If we receive disclosures on which we are not empowered to act we can signpost other regulators or ombudsmen, or we can share information directly with them.

We have a number of routes that people wishing to make a whistleblowing disclosure may use to contact us and we have undertaken a number of positive steps to encourage registrants and others to raise concerns. The main route is our fitness to practise referral process. This is used for raising concerns about an individual nurse or midwife's ability to practise safely and effectively. More information is available on our [referrals page](#) and in our publication '[Raising concerns: guidance for nurses and midwives](#)'. Additionally, we publish advice on referrals for employers, patients in the public. We have a contact centre that can be used to talk through the process and any queries or concerns a person may have.

Broadly speaking, we believe that the proposal in the consultation and the legal drafting contained in s.135 of the Small Business, Enterprise and Employment Bill meet the stated policy aims in a proportionate way. However, there are a number of areas requiring further clarification before or during the Bill's committee stages. These are set out as follows:

Defining public interest disclosures to be reported

On page 7 of the consultation document ('5. *The Proposal*'), it is proposed that whistleblowing reports should cover 'the number of disclosures that qualify as protected interest disclosures'. We ask for clarification of how this will be defined, and who would be responsible for deciding whether a disclosure qualifies or not in more detail. Without this, it may well be that any fitness to practise allegation referred to the NMC by a nurse or midwife or an employer could fall into the proposed reporting requirement: for 2012-13 that would equate to 2,275¹ referrals. A common definition is a prerequisite for evaluating the actions of prescribed persons meaningfully and fairly.

Defining the parameters, including what is likely to appear in the Secretary of State's regulations for reporting, will determine the impact on the NMC. For example, if more specific information is required to be reported on which is currently not recorded by us this may require us to make legislative change as our governing legislation is very detailed and prescriptive. This has financial implications attributed to the legal requirement for consultation set out in our legislation and legal drafting costs and an 18 month time period that would be required to complete the process. We may also need to amend our systems and processes to collect, store and analyse data which at present may not be collected. Further detail would allow us to provide an estimate of such costs. We would also welcome clarity about whether prescribed persons will be issued with specific reporting requirements, or whether we will be able to choose how we meet the requirement.

The regulations for whistleblowing reporting set by the Secretary of State

¹ Page 9 - http://www.nmc-uk.org/Documents/Annual_reports_and_accounts/Annual%20Fitness%20to%20Practise%20Report%202012%20-%202013.PDF This total is reached by combining the total number of new referrals in table 1 for employers, other and self referrals.

The consultation and draft legislation proposes that the Secretary of State for the Department of Business, Innovation and Skills would set regulations for the whistleblowing reporting requirements, and that these regulations may be different for different prescribed persons set out in the schedule of the Public Interest Disclosure (Prescribed Persons) Order 1999. We welcome this given the primary focus for healthcare professional regulators is public protection: a stand apart and defining role for us which is not the case for many other organisations.

We believe that a different approach may be needed for professional regulators as distinct from systems/organisational regulators to whom the recommendations of the Whistleblowing Commission seem to have been chiefly addressed. We recognise that we have a significant role to play in encouraging and supporting the raising of concerns and dealing with specific concerns raised about our registrants and our functions, but it is different in kind from the role of regulators of organisations. To this end, we would welcome clarity on whether there will be a separate set of regulations for the group of professional healthcare regulators to address our specific focus and bring consistency? If so, we would welcome the opportunity to develop such regulations in partnership with the Department and other healthcare professional regulators. We would also welcome clarity on the format of reporting to be set out in such regulations as described below.

The format of whistleblowing reporting

Specifying the form of annual whistleblowing reports as well as specifying the timeframe for completion, has both pros and cons. If there is a set timeframe and no requirement for this to be as part of an annual report, but be in a stand-alone report, this would be less burdensome on an organisation. For example, if required to be included in an annual report by a set date this could be incompatible with the annual report or the specific process an organisation may have in completing an annual report. A number of organisations will be required to secure ministerial or parliamentary sign off at fixed points in the calendar. This may not be able to be completed within a set publication deadline or reporting deadline for whistleblowing.

Therefore it may be considered proportionate for prescribed persons to be given scope to decide how they fulfil their obligations to report, taking into consideration other requirements upon them. We are also interested in understanding why it is proposed that all whistleblowing reports are to be presented to the Secretary of State and then be laid in parliament.

We note that the statutory reporting of whistleblowing will only ever be one of a number of approaches to ensure consistency, transparency and protection for employees and the public. Ultimately, the defining measure of success for the whistleblowing framework will be the impact of qualifying disclosures made: this means the actions taken and improvements made as a result of those disclosures.

Parallel matters related to whistleblowing

We note that there are a number of activities running in parallel with this consultation that relate to whistleblowing which may impact upon it. For example:

1. We have provided evidence to the Freedom to Speak Up Review chaired by Sir Robert Francis. The Review is yet to report back and may result in a number of recommendations for change to the whistleblowing framework.
2. We have provided evidence to the Health Select Committee on raising concerns. Again, the Committee has not yet reported back and may result in a number of recommendations for change to the whistleblowing framework.
3. We note that the Public Interest Disclosure (Prescribed Persons) Order 1999 (as amended) referred to in the consultation will be replaced by the Public Interest Disclosure (Prescribed Persons) Order 2014 as of 1 October 2014.

We recommend the consideration of the outcomes of this closely related work is included in consultation response analysis by the Department to ensure coherence in changes to the whistleblowing framework.

Other

In addition, we suggest prescribed persons will need clarity about the consequences of failing to comply with a duty to report. What process would be followed in such an event? For example, would the prescribed person receive a written notice from the Department, would there be timeframes to comply, would there be sanctions and would there be an avenue of appeal?

We would welcome an urgent meeting to discuss these matters further and will be in touch to arrange this shortly.

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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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

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