



**Comhairle Chontae Dhún na nGall
Donegal County Council**

Protected Disclosures Act 2014 (“the Act”) – Section 21

POLICY AND PROCEDURES

These are the policies and procedures established and maintained by Donegal County Council (“the Council”) for the making of protected disclosures under the Act by workers who are or were employed by the Council and for dealing with such disclosures.

1. Introduction –

1.1 This document should be read in conjunction with the Act itself and the Ministerial Guidance issued under Section 21(3) and to which the Council has had regard in performing its functions of establishing and maintaining these procedures. For convenience the full text of the Act and the Ministerial Guidance is included in Appendices 1 and 2. Reference should be made to those as required and particularly so for words and terms defined in the Act which will have the same meanings here.

1.2 The Act in the title thereof is stated to have been enacted as –

“An Act to make provision for and in connection with the protection of persons from the taking of action against them in respect of the making of certain disclosures in the public interest and for connected purposes”.

Hence the primary purpose of the Act is concerned with making provision to protect persons (in this document referred to as “discloser(s)”) from the taking of action against them where in the public interest they make certain disclosures (detailed and defined as “protected disclosures” in Section 5 of the Act).

1.3 These procedures apply only to “protected disclosures” and reference should be made to the definitions of such and of “relevant information” and “relevant wrongdoings” in Section 5 of the Act. In summary -

- A “protected disclosure” means¹ disclosure of relevant information (whether before or after the passing of the Act) made by a worker in the manner specified in Sections 6, 7, 8, 9 or 10 of the Act.
- “Relevant information” is information which in the reasonable belief of the worker tends to show one or more relevant wrongdoings and which came to the attention of the worker in connection with his employment.

¹ Subject to exceptions contained in Sections 5(5) and (6), 17 and 18 of the Act.

- Relevant wrongdoings for the purpose of the Act are listed in paragraphs (a) to (h) inclusive of Section 5(3) of the Act.

1.4 These procedures are therefore confined to issues of wrongdoing and further it must be “relevant wrongdoing” within the categories (a) to (h) in Section 5(3) of the Act. Where a worker seeks to raise an issue other than of wrongdoing, these procedures do not apply and such matters should be brought up in the ordinary course with his line manager under the applicable grievance or other procedure or otherwise under the relevant term of the worker’s contract of employment.

1.5 References to “disclosures” in these procedures is confined except where expressly stated otherwise to “protected disclosures”.

2. Key principles

2.1 The Council adopts the key principles as per the ministerial guidance (paragraph C) as also informing these procedures being that -

2.2 All disclosures of wrongdoing in the workplace should, as a matter of routine, be the subject of an appropriate assessment and/or investigation and the identity of the discloser should be adequately protected; and

2.3 Providing that the worker discloses information relating to wrongdoing in an appropriate manner and based on reasonable belief, no question of penalisation should arise.

2.4 If those two above principles are respected, there should be no need for disclosers to access the protections contained in the Act.

3. Benefits of these procedures

3.1 The Council also adopts the stated benefits of these procedures per the ministerial guidance (paragraph D) as follows –

3.2 Putting in place appropriate procedures is central to encouraging workers to make disclosures directly to their employer rather than to a person outside the Council.

3.3 Internal disclosures facilitate the Council in, for example –

- deterring wrongdoing within the Council;
- ensuring early detection and remediation of potential wrongdoing;
- reducing the risk of leaking of confidential information;
- demonstrating to interested stakeholders, regulators and the Courts that the Council is accountable and managed effectively;
- improving trust, confidence and morale of workers in the Council;
- building a responsible and ethical organisational culture and
- limiting the risk of reputational and financial damage.

3.4 Having appropriate procedures in place is also a factor that a Court or adjudication officer may consider when hearing a protected disclosure claim and when determining if it was reasonable for the worker to have made an alternative disclosure.

3.5 Having appropriate procedures in place also provides a safe platform for workers who wish to make a protected disclosure to do so in the confidence that they enjoy the protections of the Act.

4. Responsibility

4.1 Overall responsibility for these procedures rests with the Chief Executive.

4.2 However day to day responsibility for the application of the procedures to workers engaged in a particular Council Directorate will be delegated to the relevant Director of Service.

5. Policy Statement

5.1 The Council is committed to maintaining an open culture with the highest standards of honesty and accountability where the making of protected disclosures by workers is encouraged and protection is provided for.

5.2 The workplace disclosure options and protections available to disclosers are as set out in the Act and in these procedures below.

6. Scope –

6.1 In accordance with Section 21(1) of the Act, these procedures apply to workers who are or were employed by the Council. However the Council will apply the procedures to protected disclosures by other “workers”² subject to necessary modifications arising from the fact that the discloser is not or never was an employee of the Council.

6.2 Disclosures of wrongdoing which is not “relevant wrongdoing” as defined in Section 5(3) of the Act or if made by a discloser who is not a “worker” as defined in Section 3(1) of the Act are not “protected disclosures”. However the Council wishes to encourage anyone who has information about alleged wrongdoing within the Council to bring that information forward under other available provisions/procedures (eg. under the ethical framework for the Local Government Service as contained in Part 15 of the Local Government Act 2001 as amended or under the procedure notified by the Council many years ago for members of the public to make complaints of alleged planning irregularities) and accompanied by relevant supporting evidence. The Council will therefore engage with anyone wishing to make such (non-protected) disclosures and advise of the procedures

² Which includes other persons such as independent contractors, trainees and agency staff and everyone coming within paragraphs (b), (c) and (d) of the definition of “worker” in Section 3(1) of the Act.

available for investigation of same and any risk that may arise for the discloser.

7. Purpose of these Procedures

7.1 The purpose of these procedures is:

7.2 To encourage workers to report internally any concerns, as soon as possible, that they may have regarding potential wrongdoing in the workplace in the manner provided by the Act and in the knowledge that their concerns will be taken seriously and investigated, where appropriate, and that their confidentiality will be respected in accordance with Section 16 of the Act.

7.3 To highlight that it is always appropriate to raise such concerns when they are based on a reasonable belief irrespective of whether any wrongdoing is in fact subsequently identified;

7.4 To provide workers with guidance on how to raise concerns;

7.5 To reassure workers that they can report relevant wrongdoings and will be entitled to the protections provided by the Act.

8. Important Definitions in the Act and Interpretation.

8.1 For “protected disclosure”, “relevant information” and “relevant wrongdoings” see paragraph 1 above. Relevant wrongdoings are set out in paragraphs (a) to (h) in Section 5(3) of the Protected Disclosures Act, 2014

www.irishstatutebook.ie/eli/2014/act/14/enacted/en/print.html and reference should be made to the full text thereof. However in summary “relevant wrongdoings” are –

(a) The commission of an offence;

(b) The failure of a person to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;

(c) A miscarriage of justice;

(d) A danger to the health and safety of any individual;

(e) Damage to the environment;

(f) An unlawful or otherwise improper use of funds or resources of the Council or of other public money;

(g) Any act or omission by or on behalf of the Council that is discriminatory or grossly negligent or constitutes gross mismanagement; or

(h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been concealed or destroyed.

For the purposes of all but paragraph (g) above of the definition (of “relevant wrongdoings”) same extends to acts/omissions that have been, are being or

are likely to be committed.

- 8.2 For the purposes of the above definition it is immaterial whether a relevant wrongdoing occurred, is occurring or would occur in the State or elsewhere and whether the law applying to it is that of the State or of any other Country.³
- 8.3 A matter is not a relevant wrongdoing within the above definition if it is a matter which it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.⁴
- 8.4 A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure as above if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.⁵
- 8.5 The motivation of the discloser (in making the disclosure) is irrelevant to whether or not it is a protected disclosure.⁶
- 8.6 Should there be proceedings which involve an issue as to whether a particular disclosure was or was not a protected disclosure, it is presumed until the contrary is proved that it is (a protected disclosure).⁷

8.7 "Worker" -

There is a broad definition of 'worker' in Section 3(1) of the Act and reference should be made to the full definition in Appendix 1. However in summary it includes employees, contractors, consultants, agency staff, former employees, temporary employees, and interns/trainees. There is no length of service qualification.

8.8 "Penalisation" -

'Penalisation' is defined⁸ as 'any act or omission that affects a worker to the worker's detriment and, in particular, includes:

- (a) suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) unfair treatment,

³ Section 5(4) of the Act.

⁴ Section 5(5) of the Act.

⁵ Section 5(6) of the Act.

⁶ Section 5(7) of the Act.

⁷ Section 5(8) of the Act.

⁸ In Section 3(1) of the Act.

- (f) coercion, intimidation or harassment,
- (g) discrimination, disadvantage or unfair treatment,
- (h) injury, damage or loss
- (i) threat of reprisal.

8.9 In these procedures references to the masculine gender shall include the feminine and to the singular shall include the plural where appropriate.

8.10 *Difference between Grievance and Protected Disclosure;*

It is important to distinguish between a protected disclosure and a grievance. A grievance is a matter specific to the employee/worker i.e. duties, terms and conditions of employment, working procedures or working conditions. A grievance should be processed under the Council's Grievance Policy and Procedure.

9. Reasonable Belief

9.1 A worker must have a reasonable belief that the information disclosed tends to show one or more relevant wrongdoings. The term "reasonable belief" does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief is based on reasonable grounds.

9.2 It may be quite reasonable for a worker to believe that a relevant wrongdoing has, is or is likely to occur on the basis of what he has observed or learned. However the worker may not know all the facts of the case and the worker is not obliged to find proof of his suspicion. In such case the worker may have reasonable grounds for believing that some form of wrongdoing has, is or is likely to occur but it may subsequently turn out that the worker was mistaken.

9.3 The worker will not be penalised simply for getting it wrong so long as he had a reasonable belief that the information disclosed tended to show one or more relevant wrongdoings.

10. *Information must come to the attention of the worker in connection with his/her employment*

In accordance with Section 5(2)(b) of the Act to be "relevant information" and thus a "protected disclosure" it must come to the attention of the worker in connection with his employment.

11. Designated Officer to Receive Disclosures

11.1 The Council will appoint a Principal Designated Officer ("Designated Officer") to receive Protected Disclosures on its behalf in accordance with Section 6 of the Act. The Council will in addition appoint at least one alternate Designated Officer to whom the worker may make the disclosure if for any reason he does

not wish to make the same to the Principal Designated Officer. All Council workers will be notified who the Designated Officers are and any changes made subsequently to those appointments.

11.2 Notwithstanding sub-paragraph 11.1 above where the discloser is a Director of Service the Designated Officer will be the Chief Executive.

11.3 “Designated Officer” hereafter in these Procedures means an Officer so designated in subparagraphs 11.1 or 11.2 above.

12. Workers outside the Council Reporting Concerns

12.1 Workers from outside the Council who become aware of a relevant wrongdoing as part of their work with or for the Council may make a report to a Designated Officer.

12.2 Workers making such disclosures are encouraged to use the Procedure for Making a Disclosure as outlined in this Procedure (Appendix 3).

13. Disclosure of information

13.1 A protected disclosure should contain relevant information which tends to show relevant wrongdoing. The ordinary meaning of disclosing “information” in this context is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible. It should not therefore be merely a bare allegation or an expression of concern.

13.2 Disclosers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do and should do is disclose the information that they have based on reasonable belief that it discloses a relevant wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

14. False Allegations

14.1 As already referred to at paragraph 9 above for a disclosure to be a protected disclosure, one of the requirements of the Act is that the information provided by the discloser tends to show one or more relevant wrongdoings **in his reasonable belief**. Hence a false allegation made deliberately or recklessly will not therefore be a “protected disclosure” and so will not have the protection of the Act including the defence of qualified privilege under the law of defamation⁹

14.2 Insulting, abusive or derogatory remarks/comment about or the discloser’s (negative) view of an individual the subject of the disclosure have no place in a

⁹ A discloser enjoys general immunity from civil liability for making a protected disclosure under Section 14 of the Act but this does not extend to an action for defamation.

protected disclosure and add nothing to same. Such remarks/comment are prejudicial, impute culpability on the part of that individual and would be a denial of his rights to due process in circumstances that no investigation has yet taken place by the Council in relation to the subject matter of the disclosure. No such remarks/comment should therefore be included as otherwise it could call into question the protected nature of the disclosure concerned ie. on the basis that it could tend to show bias on the part of the discloser and it could then perhaps be argued that his belief in the information provided may not have been reasonable.

15. Person who is the subject of a Protected Disclosure (“the Respondent”)

- A respondent who is the subject of a disclosure is entitled to fair procedures. While an investigation is ongoing, all reasonable steps will be taken to protect the confidentiality of those who are the subject of allegations in a protected disclosure.

15.1 Hence where an allegation is made against a respondent, the Council will ensure that the respondent is afforded appropriate protection in accordance with the general principles of natural justice and fair procedures.

16. Recording and Tracking of Disclosures/Annual Report

16.1 Section 22 of the Act requires the Council to prepare and publish an annual report by the 30th June each year (in relation to the immediately preceding year) -

- a. in a form which does not enable identification of the persons involved and
- b. contains the following information –

- the number of protected disclosures made to the Council;
- the action (if any) taken in response to those disclosures, and
- such other information relating to the disclosures and action taken as may be requested by the Minister from time to time.

16.2 The Council will therefore record all protected disclosures made and track the actions taken on foot of same and the decision(s) made arising so as to enable it comply with Section 22 each year.

17. Records Management

17.1 Records created, maintained and stored by the Council as part of these Procedures shall comply with the requirements of confidentiality under the Act and with the National Records Retention Policy (2001) and any other relevant records retention policies.

18. Monitoring of the Policy and External Reporting Obligations

- 18.1 The Council shall monitor the implementation of and compliance with these procedures and will review the same on a regular basis.
- 18.2 These procedures will be reviewed three years after their introduction and employees will be consulted through their representatives in relation to any proposed changes to same.

19. Procedure for Making a Disclosure

- a. An employee/worker must make a disclosure in the manner set out in the Act to gain the protections provided under the same.
- b. A worker who has a reasonable belief in relation to one or more relevant wrongdoings should disclose the information directly to a Designated Officer.
- c. Where the discloser is of Director of Service grade, he should make the disclosure to the Chief Executive.
- d. The disclosure under this policy should be made in writing or verbally to the Designated Officer. In the event of a verbal disclosure, the disclosure will be recorded by the Designated Officer and signed by the discloser as an accurate record of their disclosure. A standard form for Making a Disclosure is attached in Appendix 3 and is also available on the Council's extranet.
- e. The discloser should communicate all relevant information relating to the concern. This will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made along with the date of the disclosure and stating whether the disclosure is made under the Act and if the discloser expects or does not expect confidentiality in relation to his identity.
- f. Where the disclosure indicates that he expects/requires confidentiality in respect of his identity but the Council ultimately concludes for reasons referred to in Section 16(2) of the Act that this will not be possible, further consultations will take place with him. The object of this will be to seek to gain his informed consent in those circumstances or otherwise to at least inform him in advance that his identity will have to be disclosed and should he require it (prior to disclosure of his identity) the facility of a review of the decision will be offered to him. The circumstances in which the discloser's identity may have to be divulged as detailed in Section 16(2) of the Act are as follows -
- (a) where the Council has taken all reasonable steps to avoid so disclosing the information but disclosure was still required;
- (b) the discloser has not objected to the release of the information;
- (c) the Council believes that disclosing the information is necessary for –
- (i) the effective investigation of the relevant wrongdoing.

- (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment or
 - (iii) the prevention of crime or the prosecution of a criminal offence or
- (d) where the disclosure is otherwise necessary in the public interest or is required by law.

- g. There is a distinction between on the one hand confidential disclosures where the Council seeks to protect the identity of the discloser in accordance with Section 16 of the Act and on the other hand anonymous disclosures where the discloser withholds his identity.

- h. Anonymous disclosures are not specifically prohibited by the Act. However as disclosures can only be made by a worker it is clearly impossible to establish this fact in the case of an anonymous complaint. Hence it is arguably not open to a worker to make a protected disclosure anonymously. However where made the Council, would still seek to act on same to the extent that this is possible. However it will be restricted in its ability to investigate the matter in the absence of knowledge of the identity of the discloser. However particularly where the discloser provides evidence (documentary or otherwise) which supports any allegations made in the disclosure , the Council will as stated seek to still act on the disclosure. It should be noted however that a worker cannot obtain redress under the Act without identifying himself.

- i. A worker intending to raise a concern should not carry out an investigation outside of the normal scope of his/her duties with a view to seeking to confirm relevant wrongdoing. Workers considering making an internal disclosure should not endeavour to find proof of their concern/suspicion or delay making the disclosure in order to gather evidence to support the disclosure first.

20. Information to be included in the making of a disclosure

- a. As per the sample form provided in Appendix 3, the disclosure should include the following:
 - that the disclosure is being made under these procedures;
 - the discloser's name, position in the Council, place of work and contact details;
 - the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing is believed to have commenced or was identified;
 - whether or not the alleged wrongdoing is still ongoing;
 - if the wrongdoing concerned has not yet occurred but the discloser believes that it is likely to be committed, state this and the basis for that belief.
 - whether the alleged wrongdoing has already been disclosed to any member of Council management and if so, to whom, when and what action was taken;
 - information in respect of the alleged wrongdoing, what is occurring/has occurred and how, and any supporting information;

- the name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that the naming of the individual is necessary to expose the wrongdoing disclosed);
- any other relevant information
(Form for Making a Disclosure - Appendix 3).

21. Procedure for Receiving a Disclosure

- Except where the discloser does not object to his identity being made known¹⁰, a Designated Officer and any other Council employee to whom the disclosure is referred in the performance of that employee's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the discloser.
- If a disclosure is made to a line manager in the course of their duties, the line manager is required to request the discloser to make the disclosure directly to a Designated Officer.
- The Designated Officer on receipt of a disclosure will undertake a screening assessment of same. This will seek to determine whether or not it should be treated as a protected disclosure under the Act. If it is unclear whether the disclosure qualifies as a protected disclosure, the Designated Officer will treat same as a protected disclosure unless and until satisfied that the information is not a protected disclosure.
- As part of the screening process, it may be necessary to differentiate between protected disclosures on the one hand and personal employment complaints on the other. In some cases the information provided may involve both a personal employment complaint and a protected disclosure. For example a worker may allege that a colleague is bullying him and also allege that the colleague is defrauding the Council. The disclosure will be assessed to determine the nature of the information provided and the procedure or procedures that are most appropriate to be used to investigate the matter.
- On separating out the different elements of the disclosure a determination will be made if relevant wrongdoing is involved and if so whether the matter proceeds as a protected disclosure. However if having assessed the disclosure it is deemed to relate solely to a personal employment complaint the discloser will be encouraged to utilise other procedures (eg. grievance or dignity at work policies) so that the complaint can be dealt with in an appropriate manner. On the other hand should there be a mix of different issues then as already alluded to in the immediately preceding paragraph above, appropriate processes will be applied to deal with those issues. Those processes may differ from case to case.

¹⁰ Per Section 16(2)(b) of the Act

- f. The screening/assessment process should consider whether the alleged wrongdoing is something that can or should be investigated or not (see paragraph 25; Procedure for Investigation of a Disclosure). If an investigation is required, the appropriate **Director of Services** will consider the nature and extent of the investigation.
- g. In the event that the Designated Officer is of the view that further investigation is not required, the Designated Officer will advise the discloser of his assessment and the basis for the assessment, insofar as is possible.
- h. As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Act, the Designated Officer will keep a written record of his actions, including timelines.
- i. Workers will be advised by the Designated Officer that the following conditions apply to a worker's disclosure:
 - It must have come to his attention in connection with his employment and
 - he must have a reasonable belief that the information disclosed tends to show a relevant wrongdoing.

22. Feedback

- a. Workers making protected disclosures will be advised that they will be provided with periodic feedback by the Designated Officer in relation to the matters disclosed and when consideration of the disclosure is complete. At certain stages the feedback may have to take the form (only) of reassurance and confirmation that the matter is receiving attention. The overriding requirement in this regard when providing feedback is that no information is communicated that could prejudice (i) the outcome of the investigation or any action that ensues (eg. disciplinary or other legal action including prosecution) or (ii) by undermining the right to fair procedures enjoyed by the person the subject of the disclosure.
- b. Generally information and feedback to the discloser will be provided in confidence. While the Council will strive to provide appropriate feedback to the discloser so that he can be satisfied that the matter is being dealt with adequately, it must always balance that against the rights of the person accused (and who is the subject of the disclosure).

23. Support and Advice

- a. The Council is committed to providing all relevant parties with any necessary support during and after making the disclosure.

24 Procedure for Communicating with any employee/worker against whom an Allegation of Wrongdoing has been made

A worker against whom an allegation of wrongdoing has been made and the disclosure has been recorded and assessed as warranting investigation by a named individual in order to establish the facts, will be advised, formally, of the following in writing:

- i. that an allegation has been made against him;
- ii. that no conclusions will be drawn by the Council until the facts have been investigated;
- iii. that he is expected to assist the investigator as far as is reasonably possible;
- iv. that the investigator will need to interview him at a specific time and place;
- v. that he may have a person of his choice present at the interview (i.e. union representative, a colleague, a peer support from his workplace, etc.);
- vi. he has the right to make a statement in respect of the allegation(s) made against them either orally and/or in writing;
- vii. as far as is reasonably possible, his confidentiality and privacy will be respected;
- viii. that Council support and advice is available to him.

25 Procedure for Investigation of a Disclosure

- 25.1 Where the Designated Officer forms the view that an investigation is required the matter should be referred to the appropriate Director of Services for examination and/or investigation or to an external person, at the Director's discretion.
- 25.2 The Designated Officer should be updated by the appropriate Director of Services on any investigation and the outcome. The fact of such an investigation taking place will be reported to the Chief Executive who will also be advised of the outcome and any recommendations arising.
- 25.3 An investigation may consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body. It is important to note that some matters may be of such seriousness that the investigation may have to be carried out externally, such as by subject matter experts or may need to be reported to and investigated by An Garda Síochána or another body with the statutory power and function of investigation of particular matters.
- 25.4 Council investigations carried out will be impartial and conducted in a manner fully consistent with due process and the procedures will commit to this standard. In addition, the confidentiality of both the worker making the report of possible wrongdoing and the person against whom the allegation of wrongdoing has been made will be protected – in the former case in accordance with the relevant legal provisions in the case of a protected disclosure and in the

latter consistent with the principles of natural justice.

25.5 Where the subject of a disclosure is a Director of Service all references to “designated officer” in this paragraph above shall be to the Chief Executive.

26 Review

26.1 A system of review is available in respect of the following:

- i. Any decision made to disclose the identity of the discloser;
- ii. The outcome of any assessment/investigation undertaken in respect of the protected disclosure; and
- iii. The outcome of any assessment/investigation in respect of any complaint of penalisation.

26.2 Any review will be conducted by a delegated member of the Senior Management Team. Where a decision is taken to disclose the identity of the discloser, where possible, the discloser will be offered a review before their identity is disclosed. Note that there is no entitlement to two reviews of the same issue.

26.3 A specific process will be drawn up for handling the review which requires that parties not involved in the original process re-evaluate the findings and consider any additional evidence provided.

26.4 The outcome of the review will then be communicated to the worker/discloser as appropriate.

27 Raising a Concern Externally

27.1 Worker(s) are encouraged to raise their concerns under the Council’s internal disclosure procedure in the first instance. However, it is recognised that this may not always be appropriate and the Act therefore provides for external reporting to persons other than the Council in certain circumstances.

27.2 It is preferable in most circumstances to disclose to the Council and, only if that is not appropriate, to use one of the options at (a) to (d) below. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the Act. Different requirements need to be met in different cases. Information in relation to the options available for external reporting and the requirements of each option are set out in the Act (see Appendix 1).

In summary these are –

(a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

(b) A prescribed person

Certain persons are prescribed by SI 339 of 2014¹¹ ("SI 339") to receive protected disclosures ("prescribed persons"). This includes the Chief Executive of the Council.

An employee/worker may make a protected disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed. However, the Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) A Minister of the Government

If the worker is or was employed in the Council, he may make a protected disclosure to the Minister for Environment Community and Local Government.

(d) A legal adviser

The Act allows a protected disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

(e) Other cases

A disclosure may also be made otherwise than in the manner specified in Sections 6-9 of the Act subject to conditions as contained in Section 10(1) and (2) of the Act (see Appendix 1).

28 Protection from dismissal/penalisation

28.1 A worker, who has a reasonable belief in the occurrence of a relevant wrongdoing in connection with his employment and discloses that concern, will not be penalised for the making of that disclosure, even if no investigation subsequently takes place, or where an investigation does take place, the investigation finds that no wrongdoing occurred. This undertaking extends to any other worker who is required to provide information in relation to matters raised as a consequence of the disclosure.

¹¹ Protected Disclosures Act 2014 (Section 7(2)) Order 2014

- 28.2 Worker(s) who may experience penalisation as a result of making a disclosure are requested to notify the Designated Officer and the Council will then assess/investigate such notifications and take appropriate action. A complaint of penalisation can be made under the Council's Grievance Policy and Procedure (see Paragraph 29 below) .

29 Complaints Procedure

- 29.1 A complaint of penalisation or for a breach of confidentiality under this policy can be made under the Council's Grievance Policy and Procedure.
- 29.2 Any such acts of penalisation or attempted penalisation may be treated as a disciplinary matter, in line with the Council's Disciplinary Policy and Procedure.
- 29.3 Except as provided for under paragraph 19(6) above breach of confidentiality by the recipient of a disclosure, or the person to whom the disclosure is referred, to disclose the discloser's identity or information that may identify the discloser, may be treated as a disciplinary matter, in line with the Council's Disciplinary Policy and Procedure.

30 Audit Committee Protocol

- 30.1 The Local Government (Audit Committee) Regulations 2014 (SI 244/2014- Article 12) require that the audit committee shall ensure that procedures are in place whereby employees of the Council may in confidence raise concerns about possible irregularities in financial reporting or other financial matters.
- 30.2 The Council's Audit Committee has adopted a Protocol to provide for referral of any concern raised with the Chair of the Audit Committee to a 'Designated Officer' to receive disclosures in accordance with the Act.

Appendix 1



Number 14 of 2014

PROTECTED DISCLOSURES ACT 2014

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[No. 14]

Protected Disclosures Act 2014.

[2014.]



Number 14 of 2014

PROTECTED DISCLOSURES ACT 2014

An Act to make provision for and in connection with the protection of persons from the taking of action against them in respect of the making of certain disclosures in the public interest and for connected purposes.

[8th July, 2014]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Protected Disclosures Act 2014.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Provision for review

2. The Minister shall—
 - (a) not later than the end of the period of 3 years beginning on the day on which this Act is passed, commence a review of the operation of this Act, and
 - (b) not more than 12 months after the end of that period, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.

Interpretation

3. (1) In this Act—

“contract of employment” means contract of service or apprenticeship, whether express or implied, and (if express) whether oral or in writing;

“disclosure”, in a case in which information disclosed is information of which the person receiving the information is already aware, means bringing to the person’s

attention;

“educational establishment” means any university, college, school or other educational establishment;

“employee” has the meaning given by section 1 of the Unfair Dismissals Act 1977 and includes an individual who is deemed to be an employee by virtue of *subsection (2) (a)*;

“employer”, in relation to a worker, means, subject to *subsection (2)(c)*—

(a) in the case of an individual who is a worker by virtue of *paragraph (a)* of the definition of that term, the person with whom the worker entered into, or for whom the worker works or worked under, the contract of employment,

(b) in the case of an individual who is a worker by virtue of *paragraph (b)* of the definition of that term, the person with whom the worker entered into, or works or worked under, the contract,

(c) in the case of an individual who is a worker by virtue of *paragraph (c)* of the definition of that term—

(i) the person for whom the worker works or worked, or

(ii) the person by whom the individual is or was introduced or supplied to do the work,

or

(d) in the case of an individual who is a worker by virtue of *paragraph (d)* of the definition of that term, the person who provides or provided the work experience or training;

“Minister” means the Minister for Public Expenditure and Reform;

“penalisation” means any act or omission that affects a worker to the worker’s detriment, and in particular includes—

(a) suspension, lay-off or dismissal,

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

(d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),

(e) unfair treatment,

(f) coercion, intimidation or harassment,

(g) discrimination, disadvantage or unfair treatment,

(h) injury, damage or loss, and

(i) threat of reprisal;

“protected disclosure” shall be construed in accordance with *section 5*;

“public body” means—

- (a) a Department of State,
- (b) a local authority within the meaning of the Local Government Act 2001,
- (c) any other entity established by or under any enactment (other than the Companies Acts), statutory instrument or charter or any scheme administered by a Minister of the Government,
- (d) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government,
- (e) a subsidiary (within the meaning of the Companies Acts) of such a company,
- (f) an entity established or appointed by the Government or a Minister of the Government,
- (g) any entity (other than one within *paragraph (e)*) that is directly or indirectly controlled by an entity within any of *paragraphs (b) to (f)*,
- (h) an entity on which any functions are conferred by or under any enactment (other than the Companies Acts), statutory instrument or charter, or
- (i) an institution of higher education (within the meaning of the Higher Education Authority Act 1971) in receipt of public funding;

“relevant information” shall be construed in accordance with *section 5(2)*;

“relevant wrongdoing” shall be construed in accordance with *subsections (3) to (5) of section 5*;

“trade union official” means an official of a trade union licensed under the Trade Union Acts 1871 to 1990;

“worker” means an individual who—

- (a) is an employee,
- (b) entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party’s business,
- (c) works or worked for a person in circumstances in which—
 - (i) the individual is introduced or supplied to do the work by a third person, and
 - (ii) the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,

or

- (d) is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than—
- (i) under a contract of employment, or
 - (ii) by an educational establishment on a course provided by the establishment,
- and includes an individual who is deemed to be a worker by virtue of *subsection (2) (b)* and any reference to a worker being employed or to employment shall be construed accordingly.
- (2) For the purposes of this Act—
- (a) an individual who is or was—
 - (i) a member of the Garda Síochána, or
 - (ii) a civil servant (within the meaning of the Civil Service Regulation Act 1956),is deemed to be an employee,
 - (b) an individual who is or was a member of the Permanent Defence Force (within the meaning of the Defence Act 1954) or the Reserve Defence Force (within the meaning of that Act) is deemed to be a worker,
 - (c) “employer”—
 - (i) in relation to a member of the Garda Síochána (other than the Commissioner of the Garda Síochána), means the Commissioner of the Garda Síochána;
 - (ii) in relation to a civil servant (within the meaning aforesaid), has the meaning given by section 2A(2) of the Unfair Dismissals Act 1977;
 - (iii) in relation to a member of the Permanent Defence Force or the Reserve Defence Force (both within the meaning aforesaid), means the Minister for Defence.

Expenses

4. The expenses incurred by the Minister under this Act shall be paid out of moneys provided by the Oireachtas.

PART 2

PROTECTED DISCLOSURES

Protected disclosures

5. (1) For the purposes of this Act “protected disclosure” means, subject to *subsection (6)* and *sections 17* and *18*, a disclosure of relevant information (whether before or after the date of the passing of this Act) made by a worker in the manner specified in *section 6, 7, 8, 9* or *10*.

- (2) For the purposes of this Act information is “relevant information” if—
 - (a) in the reasonable belief of the worker, it tends to show one or more relevant wrongdoings, and
 - (b) it came to the attention of the worker in connection with the worker’s employment.
- (3) The following matters are relevant wrongdoings for the purposes of this Act—
 - (a) that an offence has been, is being 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, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
 - (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,
 - (f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
 - (g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement, or
 - (h) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.
- (4) For the purposes of *subsection (3)* it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.
- (5) A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker’s employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.
- (6) A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.
- (7) The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.
- (8) In proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.

Disclosure to employer or other responsible person

6. (1) A disclosure is made in the manner specified in this section if the worker makes it—

- (a) to the worker's employer, or
 - (b) where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly—
 - (i) to the conduct of a person other than the worker's employer, or
 - (ii) to something for which a person other than the worker's employer has legal responsibility,
to that other person.
- (2) A worker who, in accordance with a procedure the use of which by the worker is authorised by the worker's employer, makes a disclosure to a person other than the employer is to be treated for the purposes of this Act as making the disclosure to the employer.

Disclosure to prescribed person

7. (1) A disclosure is made in the manner specified in this section if the worker—
- (a) makes the disclosure to a person prescribed under *subsection (2)(a)*, and
 - (b) reasonably believes—
 - (i) that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under *subsection (2)(b)*, and
 - (ii) that the information disclosed, and any allegation contained in it, are substantially true.
- (2) The Minister may by order—
- (a) prescribe such persons as, by reason of the nature of their responsibilities or functions, appear appropriate to be recipients of disclosures of relevant wrongdoings falling within the description of matters in respect of which they are prescribed, and
 - (b) prescribe in respect of each prescribed person such description of matters as appears appropriate by reason of the nature of the responsibilities or functions of the person.
- (3) Every order under *subsection (2)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under the order.

Disclosure to Minister

8. A disclosure is made in the manner specified in this section if—
- (a) the worker is or was employed in a public body, and
 - (b) the disclosure is made to a Minister of the Government on whom any function

relating to the public body is conferred or imposed by or under any enactment.

Disclosure to legal adviser

9. A disclosure is made in the manner specified in this section if it is made by the worker in the course of obtaining legal advice (including advice relating to the operation of this Act) from a barrister, solicitor, trade union official or official of an excepted body (within the meaning of section 6 of the Trade Union Act 1941).

Disclosure in other cases

10. (1) A disclosure is made in the manner specified in this section if it is made otherwise than in the manner specified in *sections 6 to 9* and—
- (a) the worker reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,
 - (b) the disclosure is not made for personal gain,
 - (c) any one or more of the conditions in *subsection (2)* is met, and
 - (d) in all the circumstances of the case, it is reasonable for the worker to make the disclosure.
- (2) The conditions referred to in *subsection (1)(c)* are—
- (a) that, at the time the worker makes the disclosure, the worker reasonably believes that the worker will be subjected to penalisation by the worker's employer if the worker makes a disclosure in the manner specified in *section 6, 7 or 8*,
 - (b) that, in a case where no relevant person is prescribed for the purposes of *section 7* in relation to the relevant wrongdoing, the worker reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if the worker makes a disclosure in the manner specified in *section 6*,
 - (c) that the worker has previously made a disclosure of substantially the same information—
 - (i) in the manner specified in *section 6*, or
 - (ii) in the manner specified in *section 7 or 8*,
- and
- (d) that the relevant wrongdoing is of an exceptionally serious nature.
- (3) In determining for the purposes of *subsection (1)(d)* whether it is reasonable for the worker to make the disclosure regard shall be had, in particular, to—
- (a) the identity of the person to whom the disclosure is made,
 - (b) in a case falling within *subsection (2)(a), (b) or (c)*, the seriousness of the relevant wrongdoing,
 - (c) in a case falling within *subsection (2)(a), (b) or (c)*, whether the relevant

wrongdoing is continuing or is likely to occur in the future,

- (d) in a case falling within *subsection (2)(c)*, any action which the employer of the worker or the person to whom the previous disclosure was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and
 - (e) in a case falling within *subsection (2)(c)(i)*, whether in making the disclosure to the employer the worker complied with any procedure the use of which by the worker was authorised by the employer.
- (4) For the purposes of this section a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in *subsection (2)(c)* even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.
- (5) In *subsection (1)(b)* “personal gain” excludes any reward payable under or by virtue of any enactment.

PART 3

PROTECTIONS

Protection of employees from dismissal for having made protected disclosure

11. (1) The Unfair Dismissals Act 1977 is amended—

(a) in section 1 by inserting the following definitions:

“ ‘protected disclosure’ has the meaning given by the *Protected Disclosures Act 2014*;

‘relevant wrongdoing’ has the meaning given by the *Protected Disclosures Act 2014*;”;

(b) in section 6 by inserting the following paragraph after paragraph (b) of subsection (2):

“(ba) the employee having made a protected disclosure;”;

(c) in section 6 by inserting the following subsection after subsection (2C):

“(2D) Sections 3 and 4 do not apply to a case falling within paragraph (ba) of subsection (2) and that paragraph applies to a person who would otherwise be excluded from this Act by any of paragraphs (a) to (c) and (e) to (k) of section 2(1).”;

(d) in section 7 by inserting the following subsection after subsection (1):

“(1A) In relation to a case falling within section 6(2)(ba) the reference in subsection (1)(c)(i) to 104 weeks has effect as if it were a reference to 260 weeks.”;

and

(e) in section 7 by inserting the following subsection after subsection (2A):

“(2B) Where—

(a) the dismissal of an employee results wholly or mainly from the employee having made a protected disclosure, and

(b) the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the disclosure,

the amount of compensation that is just and equitable may be up to 25 per cent less than the amount that it would otherwise be.”.

(2) *Schedule 1* contains provisions for interim relief in cases where a claim is brought for redress for a dismissal which is an unfair dismissal by virtue of section 6(2)(ba) (inserted by *subsection (1)*) of the Unfair Dismissals Act 1977.

Other protection of employees from penalisation for having made protected disclosure

12. (1) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure.
- (2) *Subsection (1)* does not apply to the dismissal of an employee to whom section 6(2) (ba) of the Unfair Dismissals Act 1977 applies.
- (3) *Schedule 2* shall have effect in relation to an alleged contravention of *subsection (1)*.
- (4) *Subsection (3)* does not apply in relation to the penalisation of an employee if the employee is within paragraph (d) of section 2(1) of the Unfair Dismissals Act 1977.
- (5) Any person who, on examination authorised under *paragraph 3(1)* of *Schedule 2*, wilfully makes any material statement which the person knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.
- (6) A person to whom a notice under *paragraph 3(2)* of *Schedule 2* has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates commits an offence and is liable on summary conviction to a class A fine.
- (7) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—
- (a) a person named in the document was, by a notice under *paragraph 3(2)* of *Schedule 2*, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both, and
- (b) a sitting of the Labour Court was held on that day and at that time and place, and the person did not attend before the Labour Court pursuant to the notice or,

having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person for an offence under *subsection (6)*, be evidence of the matters so stated without further proof unless the contrary is shown.

- (8) Summary proceedings for an offence under *subsection (5)* or *(6)* may be brought and prosecuted by the Minister for Jobs, Enterprise and Innovation.
- (9) Where an offence under *subsection (5)* or *(6)* is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
- (10) Where the affairs of a body corporate are managed by its members, *subsection (9)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

Tort action for suffering detriment because of making protected disclosure

13. (1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused has a right of action in tort against the person by whom the detriment is caused.
- (2) A person may not both—
- (a) pursue a right of action under *subsection (1)* against a person in respect of a matter, and
 - (b) in respect of the same matter make or present against the same person—
 - (i) a claim for redress under the Unfair Dismissals Acts 1977 to 2007,
 - (ii) a complaint under *Schedule 2*, or
 - (iii) a complaint under section 114 of the Defence Act 1954 or section 6 of the Ombudsman (Defence Forces) Act 2004.
- (3) In *subsection (1)* “detriment” includes—
- (a) coercion, intimidation or harassment,
 - (b) discrimination, disadvantage or adverse treatment in relation to employment (or prospective employment),
 - (c) injury, damage or loss, and
 - (d) threat of reprisal.

Immunity from civil liability for making protected disclosure

14. (1) No cause of action in civil proceedings, other than a defamation action (within the meaning of the Defamation Act 2009), shall lie against a person in respect of the making of a protected disclosure.
- (2) The Defamation Act 2009 is amended in Part 1 of Schedule 1 by inserting the following paragraph after paragraph 13:

“13A. A protected disclosure within the meaning of the *Protected Disclosures Act 2014*.”.

Making protected disclosure not to constitute criminal offence

15. In a prosecution of a person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

Protection of identity of maker of protected disclosure

16. (1) A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the person by whom the protected disclosure was made.
- (2) *Subsection (1)* does not apply if—
- (a) the person to whom the protected disclosure was made or referred shows that he or she took all reasonable steps to avoid so disclosing any such information,
 - (b) the person to whom the protected disclosure was made or referred reasonably believes that the person by whom the protected disclosure was made does not object to the disclosure of any such information,
 - (c) the person to whom the protected disclosure was made or referred reasonably believes that disclosing any such information is necessary for—
 - (i) the effective investigation of the relevant wrongdoing concerned,
 - (ii) the prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (iii) the prevention of crime or prosecution of a criminal offence,
- or
- (d) the disclosure is otherwise necessary in the public interest or is required by law.
- (3) A failure to comply with *subsection (1)* is actionable by the person by whom the protected disclosure was made if that person suffers any loss by reason of the failure to comply.

PART 4

SPECIAL CASES

Law enforcement, etc.

17. (1) This section applies to a disclosure of relevant information, other than a disclosure of relevant information to which *section 18* applies, that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair—
- (a) the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters,
 - (b) the enforcement or administration of, or compliance with, any law,
 - (c) lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property,
 - (d) the fairness of proceedings before a court or tribunal,
 - (e) the security of a relevant institution, or
 - (f) the security of any system of communications of the Garda Síochána, the Defence Forces or a relevant institution.
- (2) If a person has been prescribed in relation to the relevant information under *section 7*, the disclosure is not a protected disclosure unless—
- (a) it is made in the manner specified in *section 6(1)(a)*, *7* or *9*, or
 - (b) if it is taxpayer information, it is made in the manner specified in *section 10* to the Comptroller and Auditor General, or
 - (c) in any other case, it is made in the manner specified in *section 10*, the conditions in *subsection (3)* are met and it is made to a member of Dáil Éireann or Seanad Éireann.
- (3) The conditions referred to in *subsection (2)(c)* are—
- (a) that the person by whom the disclosure was made has made a disclosure of substantially the same relevant information in the manner specified in *section 7*,
 - (b) that a reasonable period for taking action in relation to that disclosure has passed, and
 - (c) that, having notified the person prescribed under *section 7* in relation to the relevant information, the person by whom that disclosure was made reasonably believes that no action has been taken in relation to that disclosure or that any action so taken was inadequate.
- (4) If no person has been prescribed under *section 7* in relation to the relevant information, the disclosure is not a protected disclosure unless—
- (a) it is made in the manner specified in *section 6(1)(a)* or *9*, or

- (b) it is made in the manner specified in *section 10*, the condition in *subsection (5)* is met and it is made to a member of Dáil Éireann or Seanad Éireann.
- (5) The condition referred to in *subsection (4)(b)* is that the disclosure is to the effect that—
- (a) an investigation undertaken for the purpose of the enforcement of any law, or anything done in the course of such an investigation, or
- (b) anything done for the purpose of the prevention or detection of any offence, the apprehension of an offender or the prosecution of an offence,
- is not authorised by law or contravenes any law.
- (6) Procedures established by Standing Orders of Dáil Éireann or Seanad Éireann may regulate how members of Dáil Éireann or Seanad Éireann are to deal with relevant information disclosed to them under *subsection (2)(c)* or *(4)(b)*.
- (7) In this section—
- “relevant institution” means—
- (a) a place to which the Prisons Acts 1826 to 2007 apply,
- (b) a military prison or detention barrack within the meaning in each case of the Defence Act 1954,
- (c) St. Patrick’s Institution,
- (d) a children detention school within the meaning of section 3 of the Children Act 2001, or
- (e) a remand centre designated under section 88 of the Children Act 2001;
- “taxpayer information” has the same meaning as in section 851A of the Taxes Consolidation Act 1997.

Security, defence, international relations and intelligence

- 18.** (1) This section applies to a disclosure of information if it might reasonably be expected—
- (a) to affect adversely—
- (i) the security of the State,
- (ii) the defence of the State, or
- (iii) the international relations of the State,
- or
- (b) to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence.

- (2) Without prejudice to the generality of *subsection (1)* this section applies to a disclosure of information—
- (a) which was obtained or prepared for the purpose of intelligence in respect of the security or defence of the State,
 - (b) which relates to—
 - (i) the tactics, strategy or operations of the Defence Forces in or outside the State, or
 - (ii) the detection, prevention or suppression of activities calculated or tending to undermine the public order or the authority of the State (which expression has the same meaning as in section 2 of the Offences Against the State Act 1939),
 - (c) which consists of a communication between a Minister of the Government and a diplomatic mission or consular post in the State or a communication between the Government or a person acting on behalf of the Government and another government or a person acting on behalf of another government,
 - (d) which consists of a communication between a Minister of the Government and a diplomatic mission or consular post of the State,
 - (e) which was communicated in confidence to any person in or outside the State from any person in or outside the State, relates to a matter referred to in *subsection (1)* or to the protection of human rights and was expressed by the latter person to be confidential or to be communicated in confidence,
 - (f) which was communicated in confidence from, to or within an international organisation of states or a subsidiary organ of such an organisation or an institution or body of the European Union or relates to negotiations between the State and such an organisation, organ, institution or body or within or in relation to such an organisation, organ, institution or body, or
 - (g) which is contained in a record of an organisation, organ, institution or body referred to in *paragraph (f)* and the disclosure of which is prohibited by the organisation, organ, institution or body.
- (3) A disclosure of information to which this section applies is not a protected disclosure unless—
- (a) it is made in the manner specified in *section 6(1)(a)*, 8 or 9, or
 - (b) it is made in the manner specified in *section 10* to the Disclosures Recipient.
- (4) There shall be an office of Disclosures Recipient and *Schedule 3* shall have effect in relation to that office.

Amendments of Garda Síochána Act 2005

19. (1) The Garda Síochána Act 2005 is amended—

- (a) by inserting the following section after section 102:

“Protected disclosures relating to the Garda Síochána

102A. (1) Where a disclosure relating to the Garda Síochána is disclosed to the Ombudsman Commission as a prescribed person under *section 7* of the *Protected Disclosures Act 2014* in respect of disclosures so relating, it may, if it appears to it desirable in the public interest to do so, investigate the disclosure, even if the worker (within the meaning of that Act) making the disclosure is a member of the Garda Síochána.

(2) The provisions of this Part relating to investigations and reports apply with the necessary modifications in relation to a relevant wrongdoing to which a disclosure referred to in subsection (1) relates as though it were the subject of a complaint referred to in section 91.”

and

(b) by repealing section 124.

(2) The Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007 (S.I. No. 168 of 2007) are revoked.

Amendment of Ombudsman (Defence Forces) Act 2004

20. (1) Section 4 of the Ombudsman (Defence Forces) Act 2004 is amended by inserting the following subsection after subsection (3):

“(3A) If the complaint is that a person has penalised or threatened penalisation (within the meaning of the *Protected Disclosures Act 2014*) against, or caused or permitted any other person to penalise or threaten penalisation against, the complainant for having made a protected disclosure (within the meaning of that Act), the Ombudsman—

(a) is not prevented from investigating any action that is the subject of the complaint, and

(b) may not decide not to carry out, and may not decide to discontinue, an investigation into any such action,

because no complaint has been made under section 114 of the Act of 1954.”

(2) The amendment made by *subsection (1)* does not affect any right to complain, under section 114 of the Defence Act 1954, that a person has penalised or threatened penalisation against, or caused or permitted any other person to penalise or threaten penalisation against, the complainant for having made a protected disclosure or to submit any grievance in relation to such a complaint in accordance with regulations under subsection (4) of the said section 114.

PART 5

MISCELLANEOUS AND SUPPLEMENTARY

Internal procedures for protected disclosures made by workers employed by public bodies

21. (1) Every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures.
- (2) The public body shall provide to workers employed by the body written information relating to the procedures established and maintained under *subsection (1)*.
- (3) The Minister may issue guidance for the purpose of assisting public bodies in the performance of their functions under *subsection (1)* and may from time to time revise or re-issue it.
- (4) Public bodies shall have regard to any guidance issued under *subsection (3)* in the performance of their functions under *subsection (1)*.

Annual report

22. (1) Every public body shall prepare and publish not later than 30 June in each year a report in relation to the immediately preceding year in a form which does not enable the identification of the persons involved containing information relating to the matters specified in *subsection (2)*.
- (2) Those matters are—
- (a) the number of protected disclosures made to the public body,
- (b) the action (if any) taken in response to those protected disclosures, and
- (c) such other information relating to those protected disclosures and the action taken as may be requested by the Minister from time to time.

No contracting-out of protections

23. Any provision in an agreement is void in so far as it purports—
- (a) to prohibit or restrict the making of protected disclosures,
- (b) to exclude or limit the operation of any provision of this Act,
- (c) to preclude a person from bringing any proceedings under or by virtue of this Act,
or
- (d) to preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

Protection of disclosure provisions in other enactments

24. (1) The Acts specified in *column (2)* of *Part 1* of *Schedule 4* are amended to the extent

specified in *column (4)* of that Schedule.

- (2) The statutory instrument specified in *column (2)* of *Part 2* of *Schedule 4* is amended to the extent specified in *column (4)* of that Schedule.

SCHEDULE 1

Section 11.

INTERIM RELIEF PENDING DETERMINATION OF CLAIM FOR UNFAIR DISMISSAL

Application for interim relief.

1. (1) An employee who claims to have been dismissed by the employee's employer wholly or mainly for having made a protected disclosure may apply to the Circuit Court for interim relief.
- (2) The Circuit Court shall not entertain an application for interim relief unless it is presented to the Court before the end of the period of 21 days immediately following the date of dismissal (whether before, on or after that date) or such longer period as the Court may allow.
- (3) The Court shall determine the application for interim relief as soon as practicable.
- (4) The employee shall give the employer prior written notice of intention to make the application for interim relief.
- (5) The Court shall not exercise any power it has of postponing the hearing of an application for interim relief except where it is satisfied that special circumstances exist which justify it in doing so.

Procedure on hearing of application and making of order.

2. (1) This paragraph applies where, on hearing an employee's application for interim relief, it appears to the Court that it is likely that there are substantial grounds for contending that dismissal results wholly or mainly from the employee having made a protected disclosure.
- (2) The Court shall announce its findings and explain to both parties (if present)—
 - (a) what powers the Court may exercise on the application, and
 - (b) in what circumstances it will exercise them.
- (3) The Court shall ask the employer (if present) whether the employer is willing, pending the determination or settlement of the claim—
 - (a) to reinstate the employee (that is, to treat the employee in all respects as if the employee had not been dismissed), or
 - (b) if not, to re-engage the employee in another position on terms and conditions not less favourable than those which would have been applicable to the employee if the employee had not been dismissed.
- (4) For the purposes of *subparagraph (3)(b)* "terms and conditions not less favourable than those which would have been applicable to the employee if the employee had not been dismissed" means, as regards seniority, pension rights and other similar rights, that the period before the dismissal should be regarded as continuous with the employee's employment following the dismissal.
- (5) If the employer states a willingness to reinstate the employee, the Court shall

make an order to that effect.

- (6) If the employer—
- (a) states a willingness to re-engage the employee in another position, and
 - (b) specifies the terms and conditions on which the employer is willing to do so,
- the Court shall ask the employee whether he or she is willing to accept the position on those terms and conditions.
- (7) If the employee is willing to accept the position on those terms and conditions, the Court shall make an order to that effect.
- (8) If the employee is not willing to accept the position on those terms and conditions—
- (a) where the Court is of the opinion that the refusal is reasonable, the Court shall make an order for the continuation of the employee's contract of employment, and
 - (b) otherwise, the Court shall make no order.
- (9) If on the hearing of an application for interim relief the employer—
- (a) fails to attend before the Court, or
 - (b) states an unwillingness either to reinstate or to re-engage the employee as mentioned in *subparagraph (3)*,
- the Court shall make an order for the continuation of the employee's contract of employment.

Order for continuation of contract of employment.

3. (1) An order under *paragraph 2* for the continuation of an employee's contract of employment is an order that the contract of employment continue in force—
- (a) for the purposes of pay or any other benefit derived from the employment, seniority, pension rights and other similar matters, and
 - (b) for the purposes of determining for any purpose the period for which the employee has been continuously employed,
- from the date of its termination (whether before or after the making of the order) until the determination or settlement of the claim.
- (2) Where the Court makes such an order it shall specify in the order the amount which is to be paid by the employer to the employee by way of pay in respect of each normal pay period, or part of any such period, falling between the date of dismissal and the determination or settlement of the claim.
- (3) Subject to the following provisions, the amount so specified shall be that which the employee could reasonably have been expected to earn during that period, or part, and shall be paid—
- (a) in the case of a payment for any such period falling wholly or partly after the

making of the order, on the normal pay day for that period, and

- (b) in the case of a payment for any past period, within such time as may be specified in the order.
- (4) If an amount is payable in respect only of part of a normal pay period, the amount shall be calculated by reference to the whole period and reduced proportionately.
- (5) Any payment made to an employee by an employer under his or her contract of employment, or by way of damages for breach of that contract, in respect of a normal pay period, or part of any such period, goes towards discharging the employer's liability in respect of that period under *subparagraph (2)*; and, conversely, any payment under that subparagraph in respect of a period goes towards discharging any liability of the employer under, or in respect of breach of, the terms and conditions of employment or contract of employment in respect of that period.
- (6) If an employee, on or after being dismissed, receives a lump sum which, or part of which, is in lieu of wages but is not referable to any normal pay period, the Court shall take the payment into account in determining the amount of pay to be payable in pursuance of any such order.
- (7) For the purposes of this paragraph, the amount which an employee could reasonably have been expected to earn, the employee's normal pay period and the normal pay day for each such period shall be determined as if the employee had not been dismissed.

Application for variation or revocation of order.

- 4. (1) At any time between—
 - (a) the making of an order under *paragraph 2*, and
 - (b) the determination or settlement of the claim,
 the employer or the employee may apply to the Court for the revocation or variation of the order on the ground of a relevant change of circumstances since the making of the order.
- (2) *Paragraphs 1 and 2* apply in relation to such an application as in relation to an original application for interim relief except that, in the case of an application by the employer, *paragraph 1(4)* has effect with the substitution of a reference to the employee for the reference to the employer and of a reference to the employer for the reference to the employee.

Consequence of failure to comply with order.

- 5. (1) If, on the application of an employee, the Court is satisfied that the employer has not complied with the terms of an order for the reinstatement or re-engagement of the employee under *paragraph 2*, the Court shall—
 - (a) make an order for the continuation of the employee's contract of employment, and

- (b) order the employer to pay compensation to the employee.
- (2) Compensation under *subparagraph (1)(b)* shall be of such amount as the Court considers just and equitable in all the circumstances having regard—
 - (a) to the infringement of the employee's right to be reinstated or re-engaged in pursuance of the order, and
 - (b) to any loss suffered by the employee in consequence of the non-compliance.
- (3) *Paragraph 3* applies to an order under *subparagraph (1)(a)* as in relation to an order under *paragraph 2*.
- (4) If on the application of an employee the Court is satisfied that the employer has not complied with the terms of an order under *subparagraph (1)(a)* for the continuation of the employee's contract of employment *subparagraph (5)* or *(6)* applies.
- (5) Where the non-compliance consists of a failure to pay an amount by way of pay specified in the order, the Court shall determine the amount owed by the employer on the date of the determination.
- (6) In any other case, the Court shall order the employer to pay the employee such compensation as the Court considers just and equitable in all the circumstances having regard to any loss suffered by the employee in consequence of the non-compliance.
- (7) Any sum awarded to the employee on the determination of the claim that he or she has been unfairly dismissed shall be specified separately from any amount determined under *subparagraph (5)*.

SCHEDULE 2

Section 12.

REDRESS FOR CONTRAVENTION OF SECTION 12(1)

Complaints to rights commissioner.

1. (1) Where an employee has made a protected disclosure—
 - (a) the employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with the consent of the employee), or
 - (b) with the consent of the employee, any trade union of which the employee is a member,
 may present a complaint to a rights commissioner that the employee's employer has contravened *section 12(1)* in relation to the employee.
- (2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall—
 - (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
 - (b) give a decision in writing in relation to it, and
 - (c) communicate the decision to the parties.
- (3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:
 - (a) declare that the complaint was or was not well founded;
 - (b) require the employer to take a specified course of action;
 - (c) require the employer to pay compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 260 weeks remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977.
- (4) In determining the amount of compensation that is just and equitable in a case in which the investigation of the relevant wrongdoing concerned was not the sole or main motivation for making the disclosure, the amount that would be just and equitable may be up to 25 per cent less than it would otherwise be.
- (5) The references in *clauses (b) and (c) of subparagraph (3)* to the employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.
- (6) Subject to *subparagraphs (7) and (8)*, a rights commissioner shall not entertain a complaint under this paragraph if it is presented after the end of the period of 6 months beginning on the date of the contravention to which the complaint relates.

- (7) Notwithstanding *subparagraph (6)*, a rights commissioner may entertain a complaint under this paragraph presented after the end of the period referred to in *subparagraph (6)*, but not later than 6 months after the end of that period, if satisfied that the failure to present the complaint within that period was due to exceptional circumstances.
- (8) Where a delay by an employee in presenting a complaint under this paragraph is due to any misrepresentation by the employer, *subparagraph (6)* shall be construed as if the reference to the date of the contravention were a reference to the date on which the misrepresentation came to the employee's notice.
- (9) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister for Jobs, Enterprise and Innovation.
- (10) A copy of a notice under *subparagraph (9)* shall be given to the other party concerned by the rights commissioner.
- (11) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.
- (12) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

Appeal from decision of rights commissioner.

2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1(2)* and, if the party does so, the Labour Court shall—
 - (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
 - (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and
 - (c) communicate the determination to the parties.
- (2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *clause (e)*, and (in so far as it relates to *clause (e)*) *clause (f)*, of *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.
- (3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.
- (4) The Labour Court shall determine the following matters and the procedures to be followed in relation to them:

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;
 - (b) the times and places of hearings of such appeals;
 - (c) the representation of the parties to such appeals;
 - (d) the publication and notification of determinations of the Labour Court;
 - (e) the particulars to be contained in a notice under *subparagraph (2)*;
 - (f) any matters consequential on, or incidental to, any of the matters referred to in *clauses (a) to (e)*.
- (5) The Labour Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.
- (6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

Paragraphs 1 and 2: supplementary provisions.

3. (1) The Labour Court shall, on the hearing of any appeal referred to it under *paragraph 2*, have power to take evidence on oath or on affirmation and for that purpose may cause persons attending as witnesses at that hearing to swear an oath or make an affirmation.
- (2) The Labour Court may, by giving notice in that behalf in writing to any person, require such person to attend at such time and place as is specified in the notice and—
- (a) to give evidence in relation to any matter appealed to the Labour Court under *paragraph 2*, or
 - (b) to produce any document specified in the notice relating to the matter in the person's possession or power.
- (3) A witness at a hearing of an appeal before the Labour Court has the same privileges and immunities as a witness before the High Court.
- (4) Where—
- (a) a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out in accordance with its terms, and
 - (b) the time for bringing an appeal against the decision has expired and no such appeal has been brought or, if such an appeal has been brought, it has been abandoned,

the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with the consent of the employee) or, with the consent of the employee, any trade union of which the employee is a member, may bring the complaint before the Labour Court and the

Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters mentioned in *clauses (a) and (b)*), make a determination to the same effect as the decision.

- (5) The bringing of a complaint before the Labour Court under *subparagraph (4)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court.
- (6) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under any of *clauses (a) to (f)* of *subparagraph (4)* of *paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (5)*.

Enforcement of determinations of Labour Court.

- 4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within the period of 28 days beginning on the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by—
 - (a) the employee concerned (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with the employee's consent), or
 - (b) with the consent of the employee, any trade union of which the employee is a member,
 without hearing the employer or any evidence (other than in relation to the failure), make an order directing the employer to carry out the determination in accordance with its terms.
- (2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the end of the period for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned, and the reference in that subparagraph to the date on which the determination is communicated to the parties shall, in a case where an appeal is abandoned, be read as a reference to the date of the abandonment.
- (3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay interest on the compensation (at the rate per annum standing specified for the time being in section 26 of the Debtors (Ireland) Act 1840) for each day or part of a day falling within the period beginning 28 days after the day on which the determination of the Labour Court is communicated to the parties and ending on the day immediately before the day on which the order of the Circuit Court is made.
- (4) An application under this paragraph to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade, business or occupation.

Provisions relating to winding up and bankruptcy.

5. (1) There shall be included among the debts which, under section 285 of the Companies Act 1963 are, in the distribution of the assets of a company being wound up, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the company to an employee, and that Act shall have effect accordingly.
- (2) There shall be included among the debts which, under section 81 of the Bankruptcy Act 1988 are, in the distribution of the property of a bankrupt or arranging debtor, to be paid in priority to all other debts, all compensation payable by virtue of a decision under *paragraph 1(2)(b)* or a determination under *paragraph 2(1)(b)* by the bankrupt or arranging debtor to an employee, and that Act shall have effect accordingly.
- (3) Formal proof of the debts to which priority is given under *subparagraph (1)* or *(2)* shall not be required except in cases where it may otherwise be provided under the Companies Act 1963 or the Bankruptcy Act 1988.

Amendment of Protection of Employees (Employers' Insolvency) Act 1984.

6. Section 6 of the Protection of Employees (Employers' Insolvency) Act 1984 is amended—
 - (a) in subsection (2)(a)—
 - (i) in subparagraph (xxix) by deleting “and” after “that Act,”
 - (ii) in subparagraph (xxx) by substituting “that Schedule, and” for “that Schedule.”, and
 - (iii) by inserting the following subparagraph after subparagraph (xxx):

“(xxxi) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under *paragraph 1(2)(b)* of *Schedule 2* to the *Protected Disclosures Act 2014* or a determination by the Labour Court under *paragraph 2(1)(b)* of that Schedule.”,
 - (b) in subsection (2)(b) by substituting “, (xxx) or (xxxi)” for “or (xxx)”,
 - (c) in subsection (2)(c) by substituting “, (xxx) or (xxxi)” for “or (xxx)”, and
 - (d) in subsection (9), in the definition of “relevant date”, by substituting “, (xxx) or (xxxi)” for “or (xxx)”.

SCHEDULE 3

Section 18.

DISCLOSURES RECIPIENT

Appointment.

1. The Taoiseach shall appoint as the Disclosures Recipient a person who is a judge or retired judge of the High Court.

Term of office.

2. (1) The Disclosures Recipient shall hold office for an initial term of 5 years and is eligible for re-appointment for one further term of 5 years.
 - (2) The Disclosures Recipient may at any time resign by letter addressed to the Taoiseach, and the resignation takes effect on the date the Taoiseach receives the letter.
 - (3) The Taoiseach may remove the Disclosures Recipient from office, but only for stated misbehaviour or for incapacity.
 - (4) A person ceases to be the Disclosures Recipient on being—
 - (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy, or
 - (d) becoming a member of a local authority.

Terms and conditions.

3. The terms and conditions (including terms relating to allowances for expenses and, in the case of a person who is a retired judge of the High Court, terms relating to remuneration) on which the Disclosures Recipient holds office are such as may be determined at the time of appointment (or re-appointment) by the Taoiseach after consultation with the Minister for Public Expenditure and Reform.

Administration and support services.

4. The Minister shall provide such administration and support services to the Disclosures Recipient as are necessary for the performance of his or her functions.

Functions.

5. Where a protected disclosure is made to the Disclosures Recipient under *section 18*, the Disclosures Recipient shall consider the relevant information and—
 - (a) if he or she considers that the disclosure of relevant information is not one to which *section 18* applies, shall give notice to the person by whom the disclosure was made stating that, and

- (b) otherwise, shall make a report—
- (i) referring the relevant information for consideration by the holder of such public office, or such public body, as appears to the Disclosures Recipient to be the most appropriate to consider the relevant information, and
 - (ii) including any such recommendations for the taking of action in relation to the relevant information as the Disclosures Recipient may consider appropriate.

Reports.

6. No later than 31 March in each year the Disclosures Recipient shall submit to the Taoiseach a report on his or her activities in the immediately preceding year.

SCHEDULE 4

Section 24.

AMENDMENTS

PART 1

Section 24(1).

AMENDMENT OF ACTS

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
1	Protections for Persons Reporting Child Abuse Act 1998 (No. 49 of 1998)	Section 3 Section 4 Section 5	<p>After subsection (2) insert— “(3) This section does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After subsection (1) insert— “(1A) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After subsection (1) insert— “(1A) This section does not apply to the making of a statement that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p>
2	Prevention of Corruption (Amendment) Act 2001 (No. 27 of 2001)	Section 8A	<p>(a) After subsection (2) insert— “(2A) Subsection (1) does not apply to a communication, or furnishing of information, that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>(b) After subsection (5) insert—</p>

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
			“(5A) Subsection (5) does not apply to a communication, or furnishing of information, that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
3	Standards in Public Office Act 2001 (No. 31 of 2001)	Section 5	After subsection (2) insert— “(2A) Subsection (1) does not apply to the making of a complaint, or the furnishing of information, that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
4	Competition Act 2002 (No. 14 of 2002)	Section 50	(a) After subsection (2) insert— “(2A) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. (b) After subsection (3) insert— “(3A) Subsection (3) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. (c) After subsection (5) insert—

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
			“(5A) Subsection (5) does not apply to the making of a statement that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
5	Communications Regulation Act 2002 (No. 20 of 2002)	Section 24A Section 24B Section 24C	After subsection (2) insert— “(2A) Subsection (1) does not apply where the disclosure is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. After subsection (1) insert— “(1A) Subsection (1) does not apply where the disclosure is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. Renumber as subsection (1) and after that subsection insert— “(2) Subsection (1) does not apply where the disclosure is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
6	Health Act 2004 (No. 42 of 2004)	Section 55L Section 55M	After subsection (3) insert— “(4) This section does not apply where the protected disclosure is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. After subsection (1) insert—

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
		Section 55S	<p>“(1A) Subsection (1) does not apply where the protected disclosure is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After subsection (1) insert—</p> <p>“(1A) This section does not apply where the disclosure is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p>
7	Employment Permits Act 2006 (No. 16 of 2006)	Section 26	<p>After subsection (3) insert—</p> <p>“(3A) Subsection (3) does not apply where the complaint is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p>
8	Consumer Protection Act 2007 (No. 19 of 2007)	Section 87	<p>(a) After subsection (2) insert—</p> <p>“(2A) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>(b) After subsection (3) insert—</p> <p>“(3A) Subsection (3) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>(c) After subsection (5) insert—</p>

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
			“(5A) Subsection (5) does not apply to the making of a statement that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
9	Chemicals Act 2008 (No. 13 of 2008)	Section 25 Section 26	Renumber as subsection (1) and after that subsection insert— “(2) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. After subsection (1) insert— “(1A) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
10	Charities Act 2009 (No. 6 of 2009)	Section 61 Section 62	Renumber as subsection (1) and after that subsection insert— “(2) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. After subsection (1) insert— “(1A) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
11	National Asset Management Agency Act 2009 (No. 34 of 2009)	Section 222 Section 223 Section 224	<p>After subsection (3) insert— “(4) This section does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014.</i>”.</p> <p>After subsection (3) insert— “(3A) Subsection (3) does not apply to the making of a complaint that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014.</i>”.</p> <p>After subsection (1) insert— “(1A) Subsection (1) does not apply to the making of a statement that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014.</i>”.</p>
12	Inland Fisheries Act 2010 (No. 10 of 2010)	Section 37 Section 38 Section 39	<p>After subsection (3) insert— “(4) This section does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014.</i>”.</p> <p>After subsection (1) insert— “(1A) Subsection (1) does not apply to the making of a complaint that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014.</i>”.</p> <p>After subsection (1) insert— “(1A) This section does not apply to the making of a statement that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014.</i>”.</p>

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
			“(5A) Subsection (5) does not apply to a communication, or furnishing of information, that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
15	Protection of Employees (Temporary Agency Work) Act 2012 (No. 13 of 2012)	Section 21 Section 22 Section 23 Section 24	<p>Renumber as subsection (1) and after that subsection insert—</p> <p>“(2) Subsection (1) does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After subsection (1) insert—</p> <p>“(1A) This section does not apply to the making of a statement that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After subsection (1) insert—</p> <p>“(1A) Subsection (1) does not apply to the making of a complaint that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After subsection (1) insert—</p> <p>“(1A) Subsection (1) does not apply to the making of a complaint that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p>

Item (1)	Short title, number and year (2)	Provision affected (3)	Amendment (4)
16	Further Education and Training Act 2013 (No. 25 of 2013)	Section 34	After subsection (3) insert— “(4) This section does not apply to a communication that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”.
17	Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013)	Section 38	(a) After subsection (1) insert— “(1A) Subsection (1) does not apply to a disclosure that is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. (b) In subsection (4)(a), after “disclosures” insert “and disclosures which would be protected disclosures but for subsection (1A)”.

PART 2

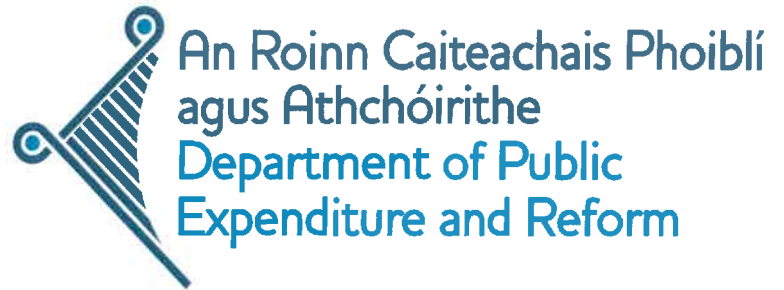
Section 24(2).

AMENDMENT OF STATUTORY INSTRUMENT

Item (1)	Citation, number and year (2)	Provision affected (3)	Amendment (4)
1	European Communities (Occurrence Reporting in Civil Aviation) Regulations 2007 (S.I. No. 285 of 2007)	Regulation 5 Regulation 6	After paragraph (3) insert— “(4) Paragraph (3)(b) does not apply where the making of the report or the giving of the information is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i> .”. After paragraph (3) insert—

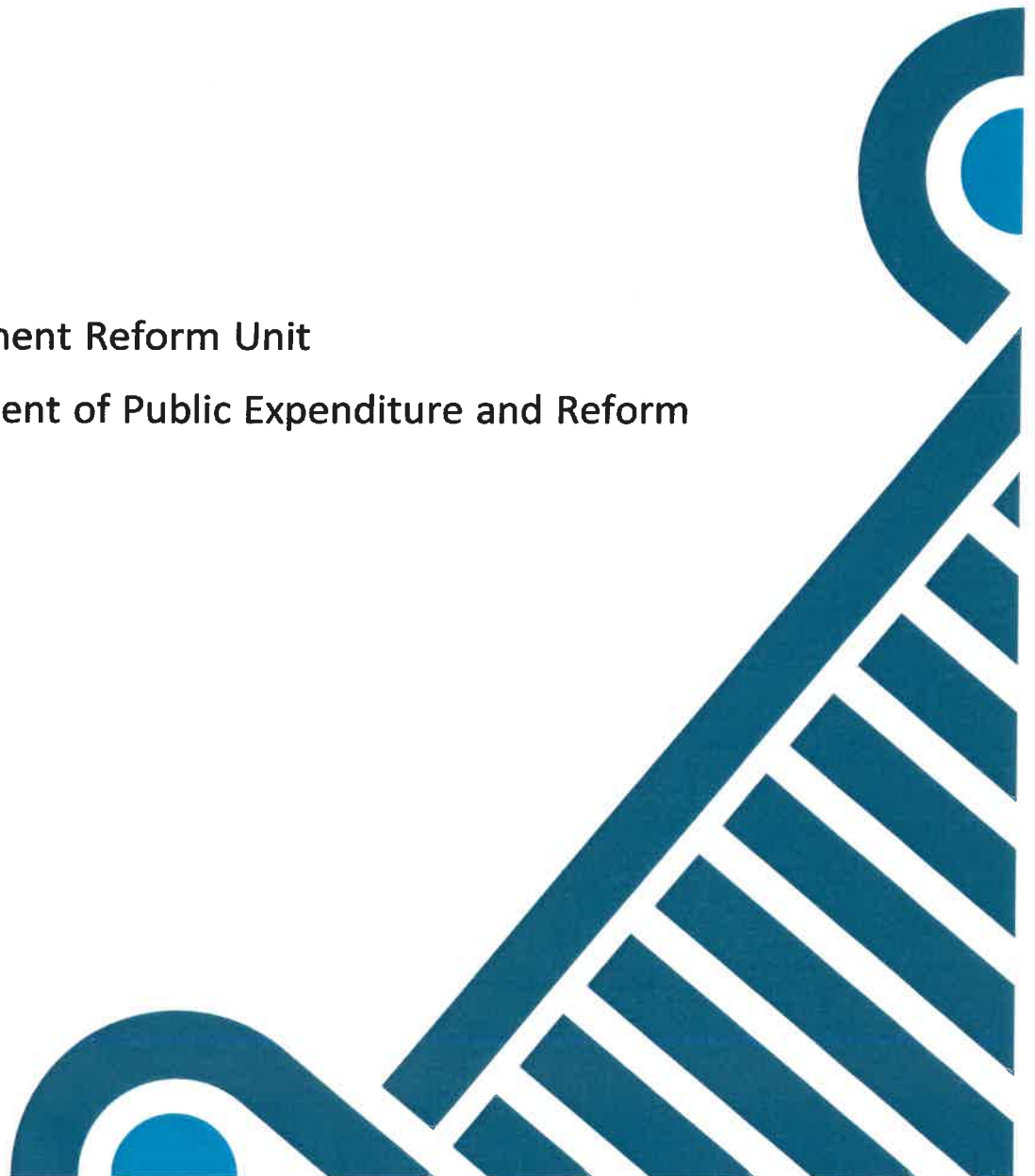
Item (1)	Citation, number and year (2)	Provision affected (3)	Amendment (4)
		Regulation 9	<p>“(4) Paragraph (3) does not apply where the making of the report or the giving of the information is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p> <p>After paragraph (7) insert—</p> <p>“(8) Paragraphs (4) to (7) do not apply where the making of the report is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p>
		Regulation 11	<p>After paragraph (3) insert—</p> <p>“(4) Paragraph (1) does not apply where the making of the report or the giving of the information is a protected disclosure within the meaning of the <i>Protected Disclosures Act 2014</i>.”.</p>

Appendix 2



Guidance under section 21(1) of the Protected Disclosures Act 2014 for the purpose of assisting public bodies in the performance of their functions under the Act

Government Reform Unit
Department of Public Expenditure and Reform



Guidance under section 21(1) of the Protected Disclosures Act 2014 (the “2014 Act”) for the purpose of assisting public bodies in the performance of their functions under that Act

A. INTRODUCTION

- 1 Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”. For the purposes of this Guidance such a worker is referred to as a “worker” or “discloser” and disclosing information in relation to alleged wrongdoing in accordance with the 2014 Act is referred to as “making a protected disclosure”.
- 2 The 2014 Act provides specific remedies for workers who are penalised for making a protected disclosure. For the purpose of this Guidance the term “penalisation” includes dismissal and causing detriment to a worker, and can relate also to the actions of co-workers. A person to whom a protected disclosure is made is obliged under the Act to protect the identity of the discloser.¹ The Act provides significant forms of redress for penalisation and other loss.

B. THE LEGAL BASIS FOR THE GUIDANCE

- 1 Section 21(1) of the 2014 Act provides that:

“Every public body shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the public body and for dealing with such disclosures.”
- 2 Subsection (3) allows the Minister for Public Expenditure and Reform to issue guidance to assist public bodies in the performance of their functions under subsection (1). This Guidance is issued under subsection (3) and the aim is to assist public bodies when establishing and maintaining procedures for the making of protected disclosures and for dealing with such disclosures (referred to in this Guidance as “Procedures”). Subsection (4) provides that public bodies “shall have regard to” this Guidance when establishing and maintaining such Procedures.

C. KEY PRINCIPLES INFORMING THE GUIDANCE

- 1 The following key principles inform this Guidance:
 - 1.1 All disclosures of wrongdoing in the workplace should, as a matter of routine, be the subject of an appropriate assessment and / or investigation and the identity of the discloser should be adequately protected; and

¹ The 2014 Act sets out specified exceptions.

1.2 Providing that the worker discloses information relating to wrongdoing, in an appropriate manner, and based on a reasonable belief, no question of penalisation should arise.

2 If those two principles are respected, there should be no need for disclosers to access the protections and redress contained in the 2014 Act.

D. BENEFITS OF PROCEDURES

1 Putting in place appropriate Procedures is central to encouraging workers to make disclosures directly to their employer rather than to a person outside the public body.

2 Internal disclosures facilitate public bodies in, for example:-

- deterring wrongdoing in the public service;
- ensuring early detection and remediation of potential wrongdoing;
- reducing the risk of leaking of confidential information;
- demonstrating to interested stakeholders, regulators and the courts that the public body is accountable and managed effectively;
- improving trust, confidence and morale of workers in the public body;
- building a responsible and ethical organisational culture; and
- limiting the risk of reputational and financial damage.

3 Having appropriate Procedures in place is also a factor that a Court or Adjudication Officer may consider when hearing a protected disclosure claim and when determining if it was reasonable for a worker to make an alternative external disclosure. See paragraph E.9.2.2(e) below for further information on alternative external disclosures.

4 Having appropriate Procedures in place provides a safe platform for workers who wish to make a protected disclosure to do so in the confidence that they enjoy the protections of the 2014 Act.

E. PROTECTED DISCLOSURES PROCEDURES – A DETAILED ANALYSIS

1 Responsibility

1.1 Overall responsibility for Procedures should rest with the relevant Board of the public body, the Management Board of a Government Department or the equivalent person or body.

1.2 Day-to-day responsibility for Procedures should be delegated to an appropriate function of the public body with the requisite knowledge and expertise to operate the Procedures correctly. This is a matter for individual public bodies to consider in the context of their own particular structures and resources.

2 Policy statement

2.1 Each public body should incorporate as part of its Procedures a succinct policy statement confirming the Board / Management commitment to creating a workplace culture that encourages the making of protected disclosures and provides protection for disclosers. The policy statement should also cover the workplace disclosure options available and the protections available for disclosers.

3 Application

- 3.1 The Procedures should set out clearly to whom they apply. The Procedures should apply to all workers as defined in section 3 of the 2014 Act, which includes current and former employees, independent contractors, trainees and agency staff.
- 3.2 While the 2014 Act applies to workers and does not include volunteers within that definition, volunteers may disclose wrongdoing and the public body should consider how any such disclosures will be dealt with, any protections that may be appropriate for volunteers in such circumstances and how they will be made aware of any risks that may arise for them in making a disclosure. Public bodies should confirm in their Procedures that any disclosures from volunteers will be appropriately assessed and / or investigated.
- 3.3 Legal advisors, where information comes to their attention while providing legal advice, are excluded from the protections of the Act.² Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor.

4 What is a protected disclosure? (Section 5)

(www.irishstatutebook.ie/eli/2014/act/14/section/5)

- 4.1 A protected disclosure, in the 2014 Act, is a disclosure of information which, in the reasonable belief of the worker, tends to show one or more relevant wrongdoings; came to the attention of the worker in connection with the worker's employment; and is disclosed in the manner prescribed in the Act.
- 4.2 The Procedures should contain guidance on what is meant by the following terms:

5 Relevant wrongdoings (section 5(3))

- 5.1 Relevant wrongdoings include:
- (a) The commission of an offence;
 - (b) The failure of a person to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
 - (c) A miscarriage of justice;
 - (d) A danger to the health and safety of any individual;
 - (e) Damage to the environment;
 - (f) An unlawful or otherwise improper use of funds or resources of a public body, or of other public money;
 - (g) An act or omission by or on behalf of a public body that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
 - (h) Information tending to show any matter falling within any of the preceding paragraphs (a) to (g) has been, is being, or is likely to be concealed or destroyed.

² Section 5(6) of the Protected Disclosures Act 2014

- 5.2 It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.
- 5.3 Disclosures may also be made by workers of wrongdoing in respect of other relevant employment-specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the 2014 Act and may be covered by other statutory protection for disclosures. The public body should consider the extent to which it is necessary to include reference to disclosures that tend to show relevant employment-specific or profession-specific wrongdoing and, if this is necessary, any other statutory protections and requirements that apply to such disclosures; any appropriate internal protections to be provided for disclosures that are not provided for by statute; and how disclosers in such circumstances may be made aware of any risks that may arise for them.
- 5.4 The term “wrongdoing” or “wrongdoings” referenced in these Guidelines is to be taken to refer to one or more of the relevant wrongdoings referenced in section 5 of the 2014 Act and paragraph 5.1 of this Guidance.

6 Disclosure of information

- 6.1 A protected disclosure should contain “information” which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on anything tangible.
- 6.2 Workers should be informed in the Procedures that they are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

7 Reasonable belief

- 7.1 A worker must have a reasonable belief that the information disclosed shows, or tends to show, wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.
- 7.2 It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and as noted above at paragraph 6.2, the worker is not obliged to find proof of his / her suspicion. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.
- 7.3 The Procedures should confirm that no worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

8 In connection with their employment

- 8.1 The information must come to the attention of the worker in connection with his / her employment, but a disclosure of any wrongdoing which is the worker’s, or the worker’s

employer's, function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the 2014 Act.³

9 Making a protected disclosure

9.1 The Procedures should include guidance on how a worker should make a protected disclosure and what it means to make a protected disclosure in a manner prescribed by the 2014 Act (both internally to the employer and externally to other persons). The Procedures should make it clear that the worker must make a disclosure in the manner set out in the Act to gain the protections of the Act and that higher standards apply when the protected disclosure is made externally.

9.2 Under the 2014 Act, protected disclosures can be made in the following ways:

9.2.1 To the employer

It should be possible in most, if not all cases, for workers to make protected disclosures internally to their employer. While public bodies cannot oblige workers to make a protected disclosure internally before making it externally, the Procedures should encourage workers to do so. It should be confirmed that internal disclosures will be taken seriously and the worker making the disclosure will receive appropriate protection.

Public bodies should state in the Procedures to whom protected disclosures should be made within the public body. The public body can suggest that workers make a protected disclosure to their line manager, as they would with any other concern, if the public body feels that this is appropriate. However, workers may not always feel comfortable making a protected disclosure to their line manager (for example, if the worker is of the opinion that the line manager may be involved in the wrongdoing or if the worker feels that a previous report has not been addressed adequately or at all). For this reason, the Procedures should allow a worker to report wrongdoing to an alternative disclosure recipient or recipients specified in the Procedures. Any person authorised or prescribed by law to receive a protected disclosure, is referred to in this Guidance as a "recipient" or "disclosure recipient".

If possible the disclosure recipient(s) should include individuals who would normally be viewed as being part of "independent" functions typically outside any part of normal line management responsibility. In any event, the disclosure recipient(s) should be trained in the Procedures, and should be persons of authority within the public body.⁴

9.2.2 Disclosure outside of the employer

The 2014 Act allows workers to make a protected disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below. Information in relation to the options available and the requirements of each option should be set out in the Procedures:

³ Unless it involves an act or omission on the part of the employer.

⁴ The 2014 Act also allows an employer to nominate a specialist third-party to receive protected disclosures on behalf of the employer. A market consultation process is currently being carried out by the Office of the Government Procurement to assess the case for centralised procurement of such services. The specific scope of the third-party role will be examined on the basis of the outcome of the market consultation and consultation with public bodies and Guidance will be developed and issued to public bodies by the Department of Public Expenditure and Reform on this subject in due course.

(a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer, or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

(b) A prescribed person

Certain persons are prescribed by Statutory Instrument 339 of 2014⁵ ("SI 339") to receive protected disclosures ("prescribed persons"). This includes the heads or senior officials of a range of statutory bodies.

A worker may make a protected disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339. However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

Public bodies should consider specifying in the Procedures any person or matters prescribed under SI 339 where such person or matter is relevant to the particular public body, as well as referring to that SI to enable a worker to identify the prescribed person for any other wrongdoing not relevant to the particular public body, but which has come to the attention of the worker in connection with his / her employment.

(c) A Minister of the Government

If a worker is or was employed in a public body, the worker may make a protected disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment.

In the Procedures, the public body should identify the Minister with primary statutory functions in relation to that body.

(d) A legal adviser

The 2014 Act allows a protected disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

(e) Alternative external disclosures (in very limited circumstances) (section 10)

The Procedures should confirm that it is preferable in most circumstances to disclose to the employer and, if that is not appropriate, to use one of the options at (a) to (d) above. The Procedures should explain that there are stringent requirements for alternative external disclosures to qualify as protected disclosures under section 10 of the 2014 Act.

9.2.3 Disclosure in the area of law enforcement, security, defence, international relations and intelligence (sections 17-18)

The 2014 Act makes particular provision for disclosures in the areas of law enforcement, security, defence, international relations and intelligence. Detailed information pertaining to

⁵ As amended by Statutory Instrument 448 of 2015

these particular provisions should be included in the Procedures of public bodies to which they are relevant.

10 Protection against penalisation (including dismissal and detriment)

10.1 As noted above in paragraph A.2, specific remedies for workers who are penalised for making a protected disclosure are provided for in Part 3 of the Act.

10.2 The definition of penalisation in section 3(1) of the Act is very comprehensive and this should be included in the Procedures.

10.3 Procedures should include a commitment that penalisation of workers who make a disclosure will not be tolerated and workers who feel that they are being subjected to adverse treatment should report the matter immediately to management. The Procedures should further contain a commitment to assess / investigate such notifications and to take appropriate action (which may include disciplinary action against supervisors and co-workers) where necessary.

11 Confidentiality / protection of identity

11.1 The Procedures should confirm that the 2014 Act imposes an obligation to protect the identity of the discloser and set out the extent of that obligation. It is important that public bodies address document security, IT, digital and manual filing in the context of fulfilling the confidentiality obligation in the individual public body and within its systems.

11.2 Where action is to be taken following a protected disclosure, it is recommended that a process is put in place for consulting with the discloser and, where possible, for gaining the informed consent of the discloser, prior to any action being taken that could identify them. This may include when disclosures are being referred by the public body to an external party.

11.3 Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision in advance of the disclosure, except in exceptional cases. The discloser should also be informed of the applicable review process, which may be invoked by the discloser in respect of this decision.

11.4 A public body's Procedures should include an assurance that the identity of the discloser must be protected under the Act, with the exception of a number of specific cases. These may arise where:

- (a) The disclosure recipient shows that he / she took all reasonable steps to avoid such disclosure;
- (b) The disclosure recipient has a reasonable belief that the discloser did not object to their identity being disclosed;
- (c) The disclosure recipient had a reasonable belief that it was necessary for:
 - (i) The investigation of the wrongdoing concerned,
 - (ii) To prevent serious risk to the security of the State, public health, public safety or the environment, or
 - (iii) The prevention of crime or prosecution of a criminal offence; or
- (d) Where the disclosure is otherwise necessary in the public interest or is required by law.

Procedures should also include a request that workers who are concerned that their identity is not being protected notify their employer, a commitment to assess / investigate such notifications and a commitment to take appropriate action where necessary.

12 Anonymous disclosures

12.1 A public body's Procedures should draw attention to the distinction between an anonymous disclosure (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures made by workers are not excluded from the protection of the 2014 Act. Public bodies should give a commitment that they will be acted upon to the extent that this is possible, while recognising that they may be restricted in their ability to investigate the manner in the absence of the knowledge of the identity of the discloser.

12.2 While affording appropriate consideration to an anonymous disclosure, public bodies should also make it clear that important elements of the public body's Procedures (e.g. keeping the discloser informed and protecting a discloser from penalisation) may be difficult or impossible to apply unless the worker's anonymity lifts. The Procedures should also make it clear that a worker cannot obtain redress under the 2014 Act without identifying themselves.

13 Personal complaints vs protected disclosures

13.1 The 2014 Act is intended to deal with disclosures of relevant wrongdoing as defined in the Act rather than personal employment complaints or, as set out in the Act, a failure by a person (such as the public body) to comply with the worker's contract of employment, work or services. The Procedures should confirm the distinction between a personal employment complaint and a protected disclosure. The Procedures should also confirm that the Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures.

13.2 Personal employment complaints should generally be dealt with under the internal grievance, or dignity at work, procedures. For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the grievance (or equivalent) procedure. Alternatively, a worker may claim that they are being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the dignity at work (or equivalent) procedure.

13.3 If a complaint is made of penalisation contrary to the 2014 Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act.

14 Motivation

14.1 The Procedures should confirm that motivation is irrelevant when determining whether or not it is a disclosure protected by the 2014 Act. All protected disclosures should be dealt with regardless of the worker's motivation for making the disclosure, and the worker should be protected so long as the worker reasonably believes that the information disclosed tended to show a wrongdoing.

14.2 However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and, may result in disciplinary action against the discloser. In

addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing.

15 Assessment and investigation

- 15.1 When a disclosure of alleged wrongdoing is made, an initial examination involving a screening assessment should be undertaken. This screening process should be referred to in the Procedures.
- 15.2 The screening process should involve an assessment of the disclosure to seek to determine whether or not it should be treated as a protected disclosure, having regard to the provisions of the 2014 Act. If it is unclear whether the disclosure qualifies as a protected disclosure, the recipient should treat the disclosure as a protected disclosure (and protect the identity of the discloser in accordance with the Procedures) until satisfied that the information is not a protected disclosure.
- 15.3 It may be necessary, as part of the screening process, to differentiate between protected disclosures and personal employment complaints. In some cases the information provided may involve a personal employment complaint and a protected disclosure. For instance, a worker may allege that a colleague is bullying the worker and also allege that the colleague is defrauding the public body. The disclosure should be assessed to determine the nature of the information disclosed and the procedure or procedures that is / are most appropriate to be used to investigate the matter.
- 15.4 It may be necessary to separate the different elements of the complaint / disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place. If, having assessed the disclosure, it is deemed to relate solely to a personal employment complaint then the discloser should be encouraged to utilise other processes (for example, the grievance or dignity at work policy) so that that complaint can be dealt with in an appropriate manner. If, having assessed the disclosure, there is a mix of different issues (some involving a protected disclosure, some involving a personal employment complaint) then an appropriate process / processes should be applied to deal with the issues. The process to be applied may differ from case to case.
- 15.5 The risk assessment should consider whether the alleged wrongdoing is something that can or should be investigated or not, and, if so, what steps should be taken as part of such an investigation. If an investigation is required, the public body should consider the nature and extent of the investigation. This could consist of an informal approach for less serious wrongdoings, a detailed and extensive investigation of serious wrongdoings, or an external investigation by another body.
- 15.6 It is important to note that some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.
- 15.7 The incorporation of a detailed and prescriptive investigative process in the Procedures may impede the public body's ability to respond flexibly and in a responsive way to disclosures of wrongdoing. Specific timeframes may also create a difficulty as the nature of protected disclosures are such that they will range from being quite simple and relatively easy to assess / investigate to being quite complex and cumbersome, thus requiring a much more substantial period of time to carry out an investigation.

- 15.8 However, public bodies should consider including in the Procedures a general framework for investigation procedures, with a set of guiding principles to ensure some consistency in terms of approach.
- 15.9 Each public body should also ensure that any complaint of penalisation or breach of confidentiality is assessed and / or investigated as appropriate.
- 16 Protection of the rights of Respondents**
- 16.1 Where an allegation is made against an individual (the Respondent), it is important to ensure that the Respondent is afforded appropriate protection. While the procedures for dealing with allegations against an individual will reflect the varying circumstances of public bodies, such procedures must comply with the general principles of natural justice and fair procedures, as appropriate.
- 16.2 In many cases, the Respondent's right to fair procedures may include a right to challenge the evidence against him / her. This right will need to be balanced against rights contained in the 2014 Act, such as the discloser's right to have his / her identity protected (which is, nevertheless, not absolute and may not be applied, for example, in cases where the disclosure recipient reasonably believes that this is necessary for the effective investigation of the wrongdoing concerned). This will be a particular challenge where a protected disclosure is made anonymously.
- 16.3 Whether it is necessary to disclose the identity of the discloser, or not, will depend upon the facts of the case, which may include, for example, whether any allegation is made against an individual and the nature of that allegation. The disclosure recipient will need to consider such matters when determining whether a protected disclosure can be investigated and the nature of any investigation. Persons making a protected disclosure should be encouraged to frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.
- 16.4 While an investigation under the Procedures is different to a grievance, dignity at work or disciplinary investigation, there are certain key themes and common features and the nature of any investigation under the Procedures will be informed by the procedures that normally apply in the public sector body when other allegations are investigated. The public body will need to be mindful that, if the investigation comes to the conclusion that some form of wrongdoing has occurred, the report that issues may need to be used in a subsequent disciplinary process. As a result, it should be able to withstand scrutiny as part of any disciplinary process and there should, where possible, be strong commonality of approach between such procedures.
- 17 Disciplinary record of discloser and other related matters**
- 17.1 Where a worker makes a disclosure of alleged wrongdoing it should be given appropriate consideration, in line with the public body's Procedures. The public body should generally focus on the disclosure made (the message), as opposed to any disciplinary (or other) issues related to the person making the disclosure (the messenger).
- 17.2 In general where a protected disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure. This should be confirmed in the Procedures.
- 18 Feedback**
- 18.1 The overriding requirement when providing feedback is that no information is communicated that could prejudice the outcome of the investigation or any action that ensues (e.g.

disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

- 18.2 Subject to 18.1, workers making protected disclosures should be provided with periodic feedback in relation to the matters disclosed and be advised when consideration of the disclosure is complete, except in exceptional cases. This does not require the public body to give a complete account of what the situation is at a particular point in time in terms of progress, but public bodies should generally give reassurance and affirmation that the matter is receiving attention.
- 18.3 Any information and feedback should be provided in confidence. There is no obligation to inform the discloser of the progress, or outcome, of any disciplinary process involving another worker which may arise on foot of an investigation occasioned by a protected disclosure. In general, such information is confidential between the employer and the worker who is the subject of a disciplinary process. A discloser should be informed that appropriate action has been taken but is not generally entitled to know what that action was.
- 18.4 In the absence of appropriate feedback there is a risk that a worker will perceive that the disclosure is not being dealt with adequately, with sufficient speed, or at all. Apart from the potential adverse impact on the credibility of the public body's protected disclosures procedure, such a situation increases the possibility that the worker will raise the issue again, this time outside of the public body. If the public body does not take action that might be reasonably expected to be taken, a Court or Adjudication Officer may consider this when determining if it was reasonable for that worker to make a disclosure in respect of the matter outside of the organisation.

19 **Support and advice**

- 19.1 All public bodies should give consideration to strategies for providing appropriate advice (which for the avoidance of doubt does not include legal advice) and support, such as access to Employee Assistance Programme (or equivalent services), to workers who make disclosures of wrongdoing. Information should be provided in the Procedures on the support available that may be of assistance to a worker.

20 **Review**

- 20.1 The Procedures should allow for a system of review in respect of the following:
- i. Any decision made to disclose the identity of the discloser (except in exceptional cases);
 - ii. The outcome of any assessment / investigation undertaken in respect of the protected disclosure; and
 - iii. The outcome of any assessment / investigation in respect of any complaint of penalisation.
- 20.2 Any review should be undertaken by a person who has not been involved in the initial assessment, investigation or decision. Where a decision is taken to disclose the identity of the discloser, where at all possible, the discloser should be offered a review before his / her identity is disclosed.
- 20.3 The review process included in the Procedures should ensure that there is no entitlement to two reviews in respect of the same issue.

21 **Consultation & provision of information & training**

- 21.1 It is recommended that each public body consults with management and staff representatives in developing its Procedures having regard to this Guidance.

- 21.2 The 2014 Act provides that the public body must provide workers employed by the body with written information relating to the Procedures. In addition to providing a copy of the Procedures to its workers, it is also recommended that the public body communicates the existence of the Procedures appropriately.
- 21.3 Where a substantial or significant level of work is carried out by contractors, public bodies should consider engaging with the employing body (if any) in order to encourage the contractor to also put in place its own Procedures if they do not already have one in place.
- 21.4 Public bodies should remind workers of the existence of the Procedures and workers should be informed if, and when, changes are made to the Procedures.
- 21.5 General awareness training should be provided to workers including those who may be dealing with protected disclosures.
- 21.6 New workers joining the public body should be informed during induction training or otherwise of the existence and terms of the Procedures.

22 Central oversight / co-ordination of information

- 22.1 In each public body there should be a point (or points) of contact for co-ordination of information and case management so that information on protected disclosures can be managed and collected in order, inter alia, to meet the body's obligations under Section 22 of the 2014 Act to report annually and to maintain oversight of how protected disclosures are dealt with. The point (or points) of contact should be at an appropriate level.
- 22.2 Public bodies should put an appropriate case management system in place to record and track protected disclosures. The case management system should ensure that there is effective monitoring of how many protected disclosures are being made; what investigation or other action is being taken; any penalisation of disclosers and any steps taken to mitigate against penalisation; and whether the Procedures are effective at encouraging disclosers to come forward.
- 22.3 All disclosures assessed as protected disclosures, irrespective of whether they are being dealt with formally or informally, should be recorded and notified to the appropriate point of contact.

23 Adaptation of Procedures - Evaluation and Review

- 23.1 Procedures introduced in a public body should be tailored to the needs of the particular public body taking into account the specific responsibilities, powers and requirements of that body. As is the case for any policy applicable to workers, the Procedures should be clear and accessible and should use simple language.
- 23.2 The control functions of the public body (such as Internal Audit or Compliance) should monitor the operation of the Procedures on an ongoing basis and report to the Audit Committee or equivalent on their findings. Such monitoring should not be conducted by the same person / area that has responsibility for the operation of the Procedures.
- 23.3 It is also recommended that senior management and the appropriate governance bodies of each public body carry out periodic reviews at least annually, and evaluate the Procedures where appropriate.

24 Non-restriction of rights to make protected disclosures

- 24.1 The 2014 Act provides that it is not permitted to have clauses in agreements that prohibit or restrict the making of protected disclosures, exclude or limit the operation of any provision of the Act, preclude a person from bringing any proceedings under, or by virtue of, the Act and

/ or precluding a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure. This should be explained in the Procedures.

25 **Mandatory reporting**

- 25.1 The 2014 Act does not oblige a worker to make a protected disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions and any relevant mandatory reporting requirements should be dealt with where necessary and appropriate in separate and distinct policies and procedures.

26 **The information that should be provided in a disclosure**

- 26.1 Workers should be able to make disclosures in accessible formats e.g. verbally, electronically or in writing. When a disclosure which appears to be a protected disclosure is made verbally it should be documented by the recipient. Where practicable, the discloser should be asked to confirm the information provided to avoid dispute at a later date in relation to the information disclosed.
- 26.2 A list of the details that it is recommended should be included in a disclosure is to be found at Appendix A of this Guidance. A similar list should be included in any Procedures. All records of disclosures should be securely maintained so as to comply with the requirements of confidentiality under the 2014 Act and with relevant obligations under Data Protection legislation.

F **REVIEW OF THIS GUIDANCE**

- 1 This Guidance will be reviewed by the Minister for Public Expenditure and Reform in light of the experience of public bodies in dealing with disclosures under the 2014 Act. Any feedback or queries you have should be directed to protected-disclosures@per.gov.ie

Note: This Guidance has been produced for information purposes only. It does not impose any legal obligations in itself, nor is it an authoritative statement of the law, which is set out in the Protected Disclosures Act 2014.

Appendix A

Details that should be included in a disclosure

It is recommended that, at a minimum, disclosures should include the following details:-

- a. that the disclosure is being made under the Procedures;
- b. the discloser's name, position in the organisation, place of work and confidential contact details;
- c. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d. whether or not the alleged wrongdoing is still ongoing;
- e. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f. information in respect of the alleged wrongdoing (what is occurring / has occurred and how) and any supporting information;
- g. the name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- h. any other relevant information.



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