

# **Protected Disclosures (Amendment) Bill 2021**

## **General Scheme**

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## **Title**

An Act to amend the [Protected Disclosures Act 2014](#) to give effect to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law<sup>1</sup> and to provide for related matters.

### **Explanatory note:**

The long title of the Bill will be considered further in consultation with the Office of the Parliamentary Counsel.

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<sup>1</sup> [OJ No. L 305, 26.11.2019, p. 17.](#)

**Acts referred to**

Data Protection Acts 1988 to 2018

Ombudsman Acts 1980 to 2012

[Protected Disclosures Act 2014](#)

## **Part I – Preliminary and General**

### **Head 1      Short title, collective citation and commencement**

Provide that:

1. This Bill may be cited as the Protected Disclosures (Amendment) Bill 2021.
2. Other collective citations as appropriate shall be included.
3. This Bill shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Explanatory note:**

These are standard provisions relating to the short title, collective citation and commencement of the Bill.

## Head 2 Interpretation

Provide that:

1. [Section 3](#) of the Principal Act is amended to insert the following definitions:-

“Principal Act” means the [Protected Disclosures Act 2014](#).

“Breaches” means acts or omissions that:

- (a) Are unlawful and relate to the Union acts and areas falling within the material scope referred to in Article 2 of the Whistleblowing Directive; or
- (b) Defeat the object or purpose of the rule in the Union acts and areas falling with the material scope referred to in Article 2 of the Whistleblowing Directive.

“Data protection law” means:

- (a) The Data Protection Acts 1988 to 2018;
- (b) The General Data Protection Regulation;
- (c) All law of the State giving further effect to the General Data Protection Regulation; and
- (d) All law of the State giving effect or further effect to Directive 2016/680.

“Directive 2016/680” means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.<sup>2</sup>

“Facilitator” means a natural person who assists a person who has made a protected disclosure in the reporting process in a work-related context and whose assistance should be confidential.

“Follow-up” means any action taken by the recipient of a protected disclosure to assess the accuracy of the information contained in the protected disclosure and, where relevant, to address the relevant wrongdoing reported, including, but not limited to, actions such as an internal inquiry, an investigation, prosecution, an action for recovery of funds or the closure of the procedure.

“Feedback” means the provision to the person who has made the protected disclosure of information on the action envisaged or taken as follow-up and the grounds for such follow-up.

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.<sup>3</sup>

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<sup>2</sup> [OJ No. L 119, 4.5.2016, p. 89.](#)

<sup>3</sup> [OJ No. L 119, 4.5.2016, p. 1.](#)

“Ombudsman” means the person who holds the office of the Ombudsman in accordance with the Ombudsman Acts 1980 to 2012.

“Person concerned” means a natural or legal person who is referred to in a protected disclosure as a person to whom the relevant wrongdoing is attributed or with whom that person is associated.

“Reporting person” means a worker who has made a protected disclosure in accordance with the provisions of this Act.

“Union” means the European Union.

“Whistleblowing Directive” means Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

“Work-related context” means current or past work activities in the public or private sector through which, irrespective of the nature of those activities, persons acquire information concerning a relevant wrongdoing and within which those persons could suffer penalisation if they reported such information.

2. The definition of “penalisation” at [section 3](#) of Principal Act is amended by the insertion of the following after subsection (i):
- (j) withholding of training;
  - (k) a negative performance assessment or employment reference;
  - (l) failure to convert a temporary employment contract into a permanent one, where the worker had legitimate expectations that he or she would be offered permanent employment;
  - (m) failure to renew or early termination of a temporary employment contract;
  - (n) harm, including to the person’s reputation, particularly in social media, or financial loss, including loss of business and loss of income;
  - (o) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry;
  - (p) early termination or cancellation of a contract for goods and services;
  - (q) cancellation of a licence or permit; and
  - (r) psychiatric or medical referrals.

**Explanatory note:**

This is a standard provision to set out definitions of important terms used in the Bill. Further definitions may be included if required during the drafting process.



### **Head 3      Expenses**

Provide that:

The expenses incurred by the Minister under this Bill shall be paid out of monies provided by the Oireachtas.

**Explanatory note:**

This is a standard provision in legislation of this kind.

## **Head 4      Regulations**

Provide that:

1. The Minister may by regulations provide for any matter referred to in this Bill as prescribed or to be prescribed.
2. Without prejudice to any provision of this Bill, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations
3. Every order (other than an order under Head 1(3)) and regulation under this Bill 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 or regulation is passed by either such House within the next 21 days on which that House sits after the order or regulation is laid before it, the order or regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Explanatory note:**

This is a standard provision relating to any regulation making powers granted to the Minister under this Bill.

## Part II – Application of the Bill

### Head 5      Material scope

Provide that:

1. [Section 5\(3\)](#) of the Principal Act is amended by the insertion of the following after subparagraph (h):
  - (i) That a breach, as defined in Article 5(1) of the Whistleblowing Directive, has occurred, is occurring or is likely to occur.
2. [Section 5](#) of the Principal Act is amended by the insertion of the following after subparagraph 8:
  - (9) A matter is not a relevant wrongdoing if it is a matter concerning interpersonal grievances exclusively affecting the reporting person, namely grievances about interpersonal conflicts between the reporting person and another worker and the matter can be channelled to other procedures designed to address such matters.

#### **Explanatory Note:**

This Head amends the definition of a “relevant wrongdoing” in the Protected Disclosures Act to include all matters within the material scope of the EU Whistleblowing Directive.

This Head also inserts a provision that matters concerning interpersonal grievances are not relevant wrongdoings, in accordance with Recital 22 of the Directive.

## Head 6 Interaction with other enactments

Provide that:

Where specific rules on the reporting of relevant wrongdoings are provided for in the sector-specific Union acts set out in the Annex to the Whistleblowing Directive, those rules shall apply. The provisions of this Bill shall be applicable to the extent that a matter is not mandatorily regulated in those sector-specific Union Acts.

### **Explanatory note:**

This Head sets out the relationship between this Bill and existing EU legislation that already provides protections for whistleblowers in certain sectors (e.g. financial services).

Work is ongoing as regards the interaction of this Bill and the Directive with other sector-specific national legislation concerning the protection of whistleblowers, such as the Acts listed at [Schedule 4](#) of the Protected Disclosures Act. Accordingly, this Head will be completed during the drafting process.

## Head 7      Personal scope

Provide that:

The definition of “worker” at [section 3](#) of the Principal Act is amended by the insertion of the following after subsection (d):

- (e) is a shareholder;
- (f) is a member of the administrative, management or supervisory body of an undertaking, including non-executive members;
- (g) is a volunteer or an unpaid trainee;
- (h) acquires information on a relevant wrongdoing during a recruitment process or other pre-contractual process.

### **Explanatory note:**

This extends the scope of persons who are protected if they report a relevant wrongdoing to include those listed in Article 4 of the Directive.

## **Head 8      Anonymous disclosures**

Provide that:

The Principal Act is amended by the insertion of the following section after section 5:

### **“Anonymous disclosures**

- 5A.** (1) A worker who makes an anonymous disclosure in the manner specified by this Act but is subsequently identified and suffers penalisation shall qualify for the protections set out in this Act.
- (2) Without prejudice to any other enactments that provide for anonymous reporting of wrongdoing, nothing in this Act shall impose an obligation on any of the legal entities within the scope of this Act to accept and follow up on anonymous disclosures.”

#### **Explanatory note:**

This Head transposes Article 6(3) of the Directive, which provides that persons who report anonymously are still protected by the Directive if their identity is subsequently revealed and they suffer penalisation.

This Head also transposes Article 6(2) of the Directive, which provides that recipients of anonymous reports are not obliged to accept and follow up on anonymous reports.

## Part III – Reporting channels

### Head 9 Internal reporting channels

Provide that:

[Section 6](#) of the Principal Act is amended by inserting the following after subsection (2):

- (3) All employers, including public bodies, with 50 or more employees shall establish and maintain internal channels and procedures for the making of protected disclosures by their employees and for follow-up in accordance with this section.
- (4) Employers may provide that workers other than employees who are in contact with the employer in the context of their work-related activities can make disclosures using the channels and procedures established in subsection (3).
- (5) The threshold of 50 or more employees laid down in subsection (3) shall not apply:
  - (a) to public bodies; and
  - (b) to employers falling within the scope of the Union acts referred to in Parts I.B and II of the Annex to the Whistleblowing Directive.
- (6) The provisions of subsection (3) shall not come into effect for employers, other than public bodies, with between 50 and 249 employees until 17 December 2023.
- (7) The Minister may, by order, provide that the threshold of 50 employees laid down in subsection (3) shall not apply to such other employers or classes of employer that the Minister may specify, following an appropriate risk assessment taking into account the activities of the entities and the ensuing level of risk for, in particular, the environment and public health. The Minister may consult with such third parties as he/she sees fit as part of the risk assessment process. The Minister shall notify the European Commission of any orders made under this provision, including the reasons for making the order and the criteria used in the risk assessment.
- (8) Internal reporting channels established under subsection (3) may be operated by a person or department designated for that purpose or provided externally by a third party. The safeguards and requirements provided for in subsection (9) shall apply to any third party entrusted with operating a reporting channel for an employer.
- (9) The procedures for making a protected disclosure and follow-up referred to in subsection (3) shall include the following:
  - (a) Channels for receiving protected disclosures shall be designed, established and operated in a secure manner that ensures that the confidentiality of the identity of the reporting person and any third party

mentioned in the report is protected and prevents access thereto by non-authorised persons;

- (b) Acknowledgement of the receipt of the protected disclosure within seven days of that receipt;
  - (c) The designation of an impartial person or persons competent to follow-up on protected disclosures (which may be the same person or persons as the recipient of the protected disclosure) who will maintain communication with the reporting person and, where necessary, ask for further information from and provide feedback to that reporting person;
  - (d) Diligent follow-up by the designated person or persons referred to in paragraph (c);
  - (e) A reasonable timeframe to provide feedback, not exceeding three months from the acknowledgement of receipt or if no acknowledgement was sent to the reporting person, three months from the expiry of the seven day period after the report was made; and
  - (f) Provision of clear and easily accessible information regarding:
    - (i) the procedures for making a protected disclosure using the channels established under subsection (3); and
    - (ii) the procedures for making a protected disclosure to a prescribed person under [section 7](#) of the Principal Act.
- (10) The channels and procedures established under subsection (3) shall enable protected disclosures to be made in writing or orally or both. Oral reporting shall be possible by telephone or through other voice messaging system and, upon request by the reporting person, by means of a physical meeting within a reasonable timeframe.
- (11) The reporting person shall cooperate, where required, with any investigation or any other follow up procedure initiated in accordance with section 6(9)(d).
- (12) [Section 21](#) of the Principal Act is repealed.

**Explanatory note:**

This Head transposes Chapter II (Articles 7 – 9) of the Directive concerning internal reporting and follow-up.

The Protected Disclosures Act already provides for reporting persons to make protected disclosures to their employer under section 6. This Head amends section 6 to provide:

- That all private sector entities with 50 or more employees must establish internal channels and procedures for making protected disclosures and follow-up (per Article 8 of the Directive); and



- The minimum requirements for the procedures for internal reporting and follow-up (per Article 9 of the Directive).

Subhead (5)(a) provides that the threshold of 50 employees shall not apply to public bodies. This ensures the retention of the existing obligation under the Protected Disclosures Act that all public bodies, regardless of size, must have internal procedures for protected disclosures.

Subhead (5)(b) provides that the threshold of 50 employees shall not apply to companies subject to EU laws in the areas of financial services; prevention of money laundering and terrorist financing; transport safety and protection of the environment. These EU laws already impose obligations on these companies to have internal reporting systems in place.

Subhead (6) provides that the obligation to have internal procedures shall not apply to companies with between 50 and 249 employees until 17 December 2023. This is in accordance with Article 26(2) of the Directive.

Subhead (11) repeals section 21 of the Protected Disclosures Act. Section 21(1) of the Act, which obliges public bodies to establish internal channels and procedures, will be superseded by subhead (3) of this Head. The other subsections of Section 21, concerning guidelines for public bodies, will be superseded by Head 25.

## Head 10 External reporting channels

Provide that:

[Section 7](#) of the Principal Act is amended:-

- (a) in subsection (1)(b)(ii) by deleting “substantially”; and
- (b) by inserting the following after subsection (3):
  - (4) Each prescribed person shall:
    - (a) Establish independent and autonomous reporting channels for receiving and handling protected disclosures made to them under this section;
    - (b) Promptly, and in any event within seven days of receipt of the protected disclosure, acknowledge that receipt unless the reporting person explicitly requested otherwise or if the prescribed person reasonably believes that acknowledging receipt of the report would jeopardise the protection of the reporting person’s identity;
    - (c) Diligently follow-up on the protected disclosure unless having assessed the matter:
      - (i) The prescribed person decides that the reported relevant wrongdoing is clearly minor and does not require further follow up; or
      - (ii) The prescribed person decides that the disclosure does not contain any meaningful new information about a relevant wrongdoing compared to a past report made to the prescribed person in respect of which the relevant procedures were concluded unless new legal or factual circumstances justify a different follow-upin which case the prescribed person shall notify the reporting person of the decision and the reasons therefor; or
    - (iii) The prescribed person decides that the disclosure concerns matters that are not within the competency of the prescribed person to follow up;in which case the prescribed person shall transmit the disclosure to whichever prescribed person or persons it reasonably believes do have the competence to follow up of the disclosure and shall, without delay, notify the reporting person of the decision and the reasons therefor;
- (d) Provide feedback to the reporting person within a reasonable timeframe not exceeding three months or six months in duly justified cases;

- (e) Communicate to the reporting person the final outcome of investigations triggered by the protected disclosure; and
  - (f) Where a protected disclosure concerns a relevant wrongdoing under section 5(3)(i) [see Head 5], transmit in due time the information contained in the protected disclosure to relevant competent institutions, bodies, offices of agencies of the Union, as appropriate, for further investigation, where required under national or Union law.
- (5) The reporting person shall cooperate, as required, with any investigation or other follow up procedure initiated in accordance with section 4(c).
  - (6) If necessary, having due regard to the number of disclosures received under this section, prescribed persons may deal with disclosures of serious wrongdoing as a matter of priority, without prejudice to the timeframe in subsection 4(d).
  - (7) Nothing in subsection 4(e) shall be interpreted as overriding any legal obligations as regards confidentiality, professional privilege, privacy and data protection.
  - (8) The reporting channels provided for under subsection (4) shall be considered independent and autonomous if they meet the following criteria:
    - (a) They are designed, established and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access thereto by non-authorised persons; and
    - (b) They enable the durable storage of information in accordance with Head 16 to allow further investigations to be carried out.
  - (9) The reporting channels provided for under subsection (4) shall enable the making of protected disclosures in writing and orally. Oral reporting shall be possible by telephone or through other voice messaging system and, upon request by the reporting person, by means of a physical meeting within a reasonable timeframe.
  - (10) Prescribed persons shall designate one or more staff members as being responsible for receiving protected disclosures made under this section and in particular for:
    - (a) Providing any interested person with information on the procedures for making a protected disclosure under this section to the prescribed person;
    - (b) Receiving and following up on protected disclosures received under this section; and
    - (c) Maintaining contact with the reporting person for the purpose of providing feedback and requesting further information where necessary.

- (11) Prescribed persons shall ensure that where a protected disclosure made under this section is received through channels other than a reporting channel provided for under subsection (4), or is received by a staff member other than those responsible for receiving protected disclosures under this section, it shall be forwarded promptly and without modification to the staff member responsible for dealing with such disclosures, and that any information that might identify the reporting person or any third party mentioned in the report shall not be otherwise disclosed.
- (12) Prescribed persons shall ensure that the staff members referred to in subsection (10) receive specific training for the purposes of handling protected disclosures under this section.
- (13) Prescribed persons shall publish on their websites in a separate, easily identifiable and accessible section at least the following information:
- (i) The conditions for qualifying for protection under this Act;
  - (ii) The contact details for making protected disclosures under this section, in particular the electronic and postal addresses and the phone numbers for making such protected disclosures, indicating whether the phone conversations are recorded;
  - (iii) The procedures applicable to the making of protected disclosures under this section, including the manner in which the prescribed person may request the reporting person to clarify the information reported or to provide additional information, the timeframe for providing feedback and the type and content of such feedback;
  - (iv) The confidentiality regime applicable to the making of protected disclosures and in particular the information in relation to the processing of personal data in accordance with Head 15 and under applicable data protection law;
  - (v) The nature of the follow-up to be given to the protected disclosure;
  - (vi) The remedies and procedures for protection against retaliation and the availability of confidential advice for persons contemplating making a protected disclosure;
  - (vii) A statement clearly explaining the conditions under which persons making a protected disclosure to the prescribed person under this section are protected from incurring liability for a breach of confidentiality pursuant to this Act;
  - (viii) Contact details for the support services provided under Head 18;
  - (ix) Any other information that the Minister may specify from time to time.
- (14) Prescribed persons shall review their procedures for receiving reports under this section and their follow-up regularly and at least once every three years. In reviewing such procedures, prescribed persons shall take account of their

experience as well as that of other prescribed persons and adapt their procedures accordingly.

**Explanatory note:**

This Head provides for the transposition of Chapter III (Articles 10 – 14) of the Directive.

Head 9(a) changes the conditions for making a protected disclosure to a prescribed person from requiring that the reporting person must reasonable believe that the information disclosed and any allegation contained in it are substantially true to a reasonable belief that the information and any allegations are true. This is as required under Article 6(1) of the Directive.

## Head 11 Ministerial reporting channels

Provide that:

The Principal Act is amended by substituting the following section for [section 8](#):

### “Disclosure to Minister

8. (1) 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 or a Minister of State with responsibility for the public body concerned; and
  - (c) one or more of the following conditions are met:
    - (i) the worker has previously made a disclosure of substantially the same information in the manner specified in [section 6](#) or [section 7](#) or both but no appropriate action was taken in response to the disclosure within the timeframes for follow-up specified in [section 6](#) or [section 7](#); or
    - (ii) the worker reasonably believes the Head of the public body concerned is personally complicit in the relevant wrongdoing reported; or
    - (iii) the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.
- (2) Each Minister of the Government shall provide clear and easily accessible information regarding the procedures for making disclosures in the manner specified in this section.
- (3) Upon receipt of a disclosure made in accordance with this section, the relevant Minister shall within 7 days:
- (a) refer it to the Protected Disclosures Office; and
  - (b) acknowledge receipt of the disclosure informing the reporting person it has been referred to the Protected Disclosures Office in accordance with subsection 3(a).
- (4) Head 18 shall apply to all disclosures referred to the Protected Disclosures Office under subsection (3)(a).

<b>Explanatory note:</b>
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This Head amends section 8 of the Protected Disclosures Act concerning disclosures made to Ministers. It provides that such disclosures shall be referred to a new Protected Disclosures Office in the Office of the Ombudsman, which will provide support and advice to the Minister in respect of handling of protected disclosures. .

## Head 12 Public disclosures

Provide that:

The Principal Act is amended by substituting the following section for [section 10](#):-

### “Disclosure in other cases

10. 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 first made a disclosure in the manner specified in [section 6](#) and [section 7](#) or directly in the manner specified in [section 7](#) but no appropriate action was taken in response to the disclosure within the timeframes for follow-up specified in [section 6](#) or [section 7](#); or
  - (b) the worker has reasonable grounds to believe that:
    - (i) The disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage; or
    - (ii) If the worker were to make a disclosure in the manner specified in [section 7](#), there is a risk of retaliation or there is a low prospect of the wrongdoing being effectively addressed, due to the particular circumstances of the case, such as those where evidence may be concealed or destroyed or where a prescribed person may be in collusion with the perpetrator of the wrongdoing or involved in the wrongdoing.”

#### **Explanatory note:**

This Head provides for the transposition of Article 15 of the Directive concerning public disclosures. The conditions for making such disclosures are substantially different to those provided for under section 10 of the Protected Disclosures Act. Accordingly, it is proposed that this entire section be replaced with text in line with that required by the Directive.



## Head 13 Duty of confidentiality

Provide that:

- (1) [Section 16](#) of the Principal Act is amended by substituting the following for subsection (1):

“(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 beyond such persons authorised to receive or follow up on the disclosure concerned any information that might identify the person by whom the protected disclosure was made.”

- (2) [Section 16](#) of the Principal Act is amended by inserting the following after subsection (2):

“(2A) Where the identity of the reporting person is disclosed to another person in accordance with subsection (2)(c), the reporting person shall be informed before their identity is disclosed unless such information would jeopardise the related investigations or judicial proceedings.”

- (3) The Principal Act is amended by the insertion of the following section after [section 16](#):

### **“Protection of trade secrets disclosed to prescribed persons**

**16A.** Prescribed persons that receive disclosures in the manner specified by [section 7](#) that include trade secrets shall not use or disclose those trade secrets for any purpose beyond what is necessary for proper follow-up of said disclosure.

### **Protection of the identity of persons concerned**

**16B.** The protections that apply in respect of [section 16](#) shall also apply to persons concerned.

#### **Explanatory note:**

This Head amends section 16 of the Protected Disclosures Act to align it with the provisions of Article 16 of the Directive regarding the confidentiality of the identity of the reporting person and any other persons named in a protected disclosure.

## **Head 14     Data protection**

Provide that:

1. Any processing of personal data carried out pursuant to this Act, including the exchange or transmission of personal data, shall be carried out in accordance with data protection law.
2. The Minister may issue regulations restricting the exercise of certain rights under data protection law to the extent, and as long as, necessary to prevent and address attempts to hinder reporting or to impede, frustrate or slow down follow-up, in particular investigations, or attempts to find out the identity of reporting persons as allowed by data protection law.
3. Personal data which are manifestly not relevant for the handling of a specific protected disclosure shall not be collected or if accidentally collected shall be deleted without undue delay.

**Explanatory note:**

This Head transposes Article 17 of the Directive concerning data protection.

## Head 15 Record keeping

Provide that:

1. All legal entities in the private and public sector who receive a protected disclosure in accordance with [section 6](#) and all prescribed persons who receive a protected disclosure in accordance with [section 7](#) and all Ministers who receive a protected disclosure in accordance with [section 8](#) shall keep records of every protected disclosure they receive. Reports shall be stored for no longer than is necessary and proportionate to comply with the provisions of this or any other enactment.
2. Where a recorded telephone line or another recorded voice messaging system is used to make a protected disclosure in accordance with sections 6, 7, or 8, subject to the consent of the reporting person, the person to whom the disclosure is made shall have the right to document the oral reporting in one of the following ways:
  - (a) By making a recording of the conversation in a durable and retrievable form; or
  - (b) Through a complete and accurate transcript of the conversation prepared by the staff members responsible for handling the protected disclosure.

The reporting person shall be afforded the opportunity to check, rectify and agree the minutes of the conversation of the call by signing them.

3. Where an unrecorded telephone line or another unrecorded voice messaging system is used to make a protected disclosure in accordance with sections 6, 7 or 8, the person to whom the disclosure is made shall have the right to document the oral reporting in the form of accurate minutes of the conversation written by the staff members responsible for handling protected disclosures. The reporting person shall be afforded the opportunity to check, rectify and agree the minutes of the conversation by signing them.
4. Where a person requests a meeting with a person authorised to receive protected disclosures in order to make a protected disclosure in accordance with [section 6](#), [section 7](#) or [section 8](#), the recipient of the report shall ensure, subject to the consent of the reporting person, that complete and accurate records of the meeting are kept in a durable and retrievable form. The person to whom the report is made shall have the right to document the meeting in one of the following ways:
  - (a) By making a recording of the conversation in a durable and retrievable form; or
  - (b) Through accurate minutes of the meeting prepared by the staff members responsible for handling the report.

The reporting person shall be afforded the opportunity to check, rectify and agree the minutes of the meeting by signing them.

### **Explanatory note:**

This Head transposes Article 18 of the Directive, which requires recipients of protected disclosures to keep accurate records of the disclosure.

## Part IV – Protected Disclosures Office

### Head 16 Establishment of a Protected Disclosures Office

Provide that:

1. A Protected Disclosures Office shall be established within the Office of the Ombudsman.
2. The Ombudsman shall assign a member of staff as the Director of the Protected Disclosures Office (“the Director”) to perform the functions set out in subhead (3) and may assign as many staff as he or she considers appropriate to assist the Director in the performance of those functions.
3. The Director shall perform the following functions:
  - (a) Transmit any disclosures received in accordance with section 7 of the Principal Act to a suitable authority for follow up as set out in Head 17;
  - (b) Support the receipt and follow-up of disclosures made in accordance with section 8 of the Principal Act as set out in Head 18; and
  - (c) Provide such administration and support services to the Disclosures Recipient as are necessary for the performance of his or her functions.
4. The Director shall have all such powers as are necessary or expedient for, or incidental to, the performance of their functions.
5. The Director shall be independent in the performance of his or her functions.
6. With the consent of the Ombudsman, the Director may authorise a member of the staff assigned to the Protected Disclosures Office to perform the Director’s functions on their behalf. In the absence of the Director or if that post is vacant, the Ombudsman may designate a member of staff to perform these functions.

**Explanatory note:**

This Head provides for the establishment of a Protected Disclosures Office in the Office of the Ombudsman and sets out the functions of this office.

## **Head 17 Follow up of disclosures made to the Protected Disclosures Office in the manner prescribed by section 7 of the Principal Act**

Provide that:

1. The Ombudsman and the Director of the Protected Disclosures Office shall be a prescribed person within the meaning of section 7 of the Principal Act.
2. Upon receipt of a disclosure made in accordance with section 7, the Director shall, within 7 days, identify a suitable authority competent to follow up on the information disclosed and shall transmit the disclosure to said suitable authority and shall, without delay, notify the reporting person accordingly and the reasons therefor.
3. A suitable authority within the meaning of subhead (2) shall be:
  - (a) any person prescribed under section 7(2)(a) of the Principal Act; or
  - (b) where there is no prescribed person responsible for the matter reported, any other person who, in the opinion of the Director, having regards to that person's responsibilities and functions, is an appropriate recipient of the information disclosed and has the competence to follow up on the information disclosed and can protect the identity of the reporting person and persons concerned in accordance with sections 16 and 16A.
4. Where a suitable authority to refer a disclosure in the manner specified in subhead (2) cannot be identified, the Director shall follow-up diligently on the information contained in the disclosure.
5. Head 20 shall apply to the conduct of any investigation carried out under subhead (4).

### **Explanatory note:**

This Head provides for the Protected Disclosures Office to act as a prescribed person of last resort to address situations where there are gaps in the provision of a prescribed person to report to under the Act or where assistance is required in directing the disclosure to an appropriate prescribed person.

## **Head 18      Role of the Protected Disclosures Office in respect of disclosures made to a Minister of the Government or a Minister of State**

Provide that:

1. Upon receipt of a disclosure referred in accordance with Section 8 of the Principal Act (as amended by Head 11), the Director shall:

(a) act as the primary point of contact with the reporting person, maintaining communication with the reporting person and, where necessary, ask for further information from and provide feedback to that reporting person;

(b) consider the relevant information in the disclosure referred and within 7 days:

(i) if the Director considers that the disclosure does not require follow up because:

(I) the disclosure of relevant information is not one to which this Act applies; or

(II) the reported relevant wrongdoing is clearly minor and does not require further follow up; or

(III) the disclosure does not contain any meaningful new information about a relevant wrongdoing compared with a past report made to a Minister in respect of which the relevant procedures were concluded unless new legal or factual circumstances justify a different follow up

the Director shall notify the reporting person and the Minister who referred the disclosure of his or her decision and the reasons therefore;

(ii) otherwise, the Director shall make a report:

(I) referring the disclosure to a suitable authority competent to follow up on the information disclosed;

(II) including any recommendations for action in relation to the relevant information as the Director may consider appropriate;

and shall transmit the disclosure to said suitable authority and shall, without delay, notify the reporting person and the Minister who referred the disclosure accordingly and the reasons therefor.

2. A suitable authority within the meaning of subhead (1)(b)(ii)(I) shall be:

(a) any Government Department or any person prescribed under section 7(2)(a) of the Principal Act; or

(b) any other person who, in the opinion of the Director, having regards to their responsibilities and functions, is an appropriate recipient of the information disclosed and has the competence to follow up on the information disclosed

and can protect the identity of the reporting person and persons concerned in accordance with sections 16 and 16A.

3. Where a suitable authority to refer a disclosure in the manner specified in subhead (1)(b)(ii) cannot be identified, the Director shall follow up diligently on the information contained in the disclosure and shall notify the reporting person and the Minister who referred the disclosure accordingly and the reasons therefor.
4. Head 20 shall apply to any the conduct of any investigation carried out under subhead (3).

**Explanatory note:** This Head provides for the Protected Disclosures Office to receive from a Minister a disclosure made to that Minister under section 8. The Office shall conduct an initial assessment of the disclosure and make a recommendation as to the authority to whom the disclosure should be referred for further action. Where a suitable authority cannot be identified within the appropriate timeframe, the Office itself shall carry out any follow up required.

## **Head 19 Provisions applying to persons who receive disclosures referred by the Protected Disclosures Office**

Provide that:

A suitable authority to whom a disclosure is referred in accordance with Head 17(3)(b) or Head 18(1)(b)(ii)(l) shall:

- (a) acknowledge receipt of the disclosure to the reporting persons within 7 days unless the reporting person explicitly requested otherwise or if the person to whom the disclosure is referred reasonably believes that acknowledging receipt of the report would jeopardise the protection of the reporting person's identity;
- (b) diligently follow-up on the disclosure, unless having assessed the matter:
  - (i) the suitable authority decides that the reported relevant wrongdoing is clearly minor and does not require further follow up; or
  - (ii) the suitable authority decides that the disclosure does not contain any meaningful new information about a relevant wrongdoing compared to a past report made to the suitable authority in respect of which the relevant procedures were concluded unless new legal or factual circumstances justify a different follow up; orin which case the suitable authority shall notify the reporting person of the decision and the reasons therefor;
- (c) provide feedback to the reporting person within a reasonable timeframe not exceeding three months or six months in duly justified cases;
- (d) communicate to the reporting person the final outcome of investigations triggered by the protected disclosure;
- (e) where a protected disclosure concerns a relevant wrongdoing under section 5(3)(i) [see Head 5], transmit in due time the information contained in the protected disclosure to relevant competent institutions, bodies, offices of agencies of the Union, as appropriate, for further investigation, where required under national or Union law; and
- (f) be subject to the provisions of Heads 14 and 15 concerning data protection and record keeping in respect of any disclosure referred to them.

**Explanatory note:** This Head sets out the obligations that apply to anyone the Protected Disclosures Office refers a disclosure to. This ensures that the core rules of the Directive that disclosures be followed up and feedback be given to the reporting person are respected.



## **Head 20 Powers of the Protected Disclosures Office to investigate disclosures received**

Provide that:

1. The Director of the Protected Disclosures Office shall, in respect of any investigation initiated in accordance with Head 17(4) or Head 18(4), prepare a report recording the facts of the matter and making recommendations as to further action that could be taken to address the wrongdoing reported.
2. The Director shall have all such powers as are necessary or expedient for, or incidental to, the performance of his or her functions under this Head. In particular, the Director may, in writing:
  - (a) request a person to provide him or her with such information as he or she considers necessary for the performance of those functions;
  - (b) request the attendance of a person or persons to provide information to the Director in person.
3. Subhead 2 does not apply to information or so much of a document as relates to decisions and proceedings of the Government or of any committee of the Government and for the purposes of this paragraph, a certificate given by the Secretary to the Government and certifying that any information or document or part of a document so relates shall be conclusive.
4. The Director may refer the report prepared under subhead 1 to such person or persons as appear to him or her to be the most appropriate to consider its findings and follow up on its recommendations.

<p><b>Explanatory note:</b> This Head sets out the powers of the Protected Disclosures Office in situations where it is required to conduct its own follow up of matters raised in a protected disclosure.</p>
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## Part V – Protections

### Head 21 Protection from retaliation

Provide that:

1. In [section 12](#)(1) of the Principal Act the expression “employee” shall include:
  - (a) members of the administrative, management or supervisory body of an undertaking, including non-executive members;
  - (b) volunteers and unpaid trainees; and
  - (c) natural persons who acquire information on a relevant wrongdoing during a recruitment process or other pre-contractual process.
2. In [section 12](#)(1) the expression “employer” shall include:
  - (a) in the case of members of the administrative, management or supervisory body of an undertaking, the undertaking in question;
  - (b) in the case of volunteers and unpaid trainees, the organisation for or under whom the volunteering or training activity was carried out;
  - (c) in the case of natural persons who acquire information on a relevant wrongdoing during a recruitment process or other pre-contractual process, the organisation responsible for that recruitment or other pre-contractual process.
3. [Schedule 2](#) of the Principal Act is amended to provide that where a complainant is a person referred to in subhead (1) and they are not in receipt of remuneration in respect of the work-related context in which they have made a protected disclosure, the maximum amount that may be awarded by way of compensation for penalisation shall be €13,000.
4. An employee, within the meaning of section 12(1) who claims to have suffered penalisation wholly or mainly for having made a protected disclosure may apply to the Circuit Court for interim relief within 21 days immediately following the date of the last instance of penalisation.

#### **Explanatory note:**

This Head provides for board members, volunteers, unpaid trainees and job applicants to have access to the mechanisms of the Workplace Relations Commission and the Labour Court for claims for redress for penalisation for having made a protected disclosure.

Section 3 of the Workplace Relations Act 2015 provides that for the purposes of a complaint under s.41(1) of that Act, the meaning of “employee” and “employer” is as defined in the relevant enactment, which in this case is s.12(1) of the Principal Act. Amending the definitions of employee and employer for s.12(1) will enable the persons listed in subhead 1 to seek redress from the Workplace Relations Commission.

Schedule 2 of the Principal Act (as amended by s.52(1) of the Workplace Relations Act 2015) provides that redress shall be determined by reference to the remuneration of the successful claimant. Subhead 3 allows for compensation to be awarded (subject to an appropriate limit) in cases where a determination based on remuneration is not possible.

Subhead 4 allows complainants to seek interim relief in respect of all forms of penalisation, as required by Article 21(6) of the Directive. Currently, interim relief applies only in the context of alleged dismissal for having made a protected disclosure.

## Head 22 Measures of support

Provide that:

1. The Minister shall provide, either directly or via a third party, for comprehensive and independent information and advice on making a protected disclosure and the rights and protections available under this Act to be made available to the public in a manner that is easily accessible and free of charge.
2. Prescribed persons shall provide effective assistance to any relevant authority involved in the protection of a person from retaliation for having made a protected disclosure in accordance with [section 7](#).

### **Explanatory note:**

This Head transposes Article 20 of the Directive, which provides for certain measures of support to be provided to workers intending to make or who have made a protected disclosure.

## **Head 23      Protections for persons concerned**

Provide that:

None of provisions in this Act shall impact on the rights of persons concerned under the Charter of Fundamental Rights of the European Union.

### **Explanatory note:**

This Head transposes Article 22(1) of the Directive, which provides that the Directive shall not prevent persons concerned from being fully able to enjoy the right to an effective remedy and a fair trial as well as the presumption of innocence and the rights of defence, including the right to be heard and the right to access their file.

## Head 24 Penalties

Provide for appropriate penalties for any person who:

- (a) Hinders or attempts to hinder a worker in making a protected disclosure;
- (b) Penalises or threatens penalisation against a worker or a facilitator or causes or permits any other person to penalise or threaten penalisation against a worker or a facilitator for having made a protected disclosure;
- (c) Brings vexatious proceedings against a worker for having made a protected disclosure or a facilitator for assisting a worker in making a protected disclosure;  
or
- (d) Breaches the duty of confidentiality in [section 16](#) or Head 13.

### **Explanatory note:**

This Head transposes Article 23 of the Directive, which requires effective, proportionate and dissuasive penalties for certain breaches of the Directive.

The Minister will decide on the precise form of these penalties during the drafting process in consultation with the Office of the Attorney General.

## Part VI – Miscellaneous and supplementary

### Head 25 Guidelines for public bodies

Provide that:

1. The Minister may issue guidance for the purpose of assisting:
  - (a) public bodies in the performance of their functions under [section 6](#); or
  - (b) prescribed persons in the performance of their functions under [section 7](#); or
  - (c) Ministers of the Government in the performance of their functions under [section 8](#)and may from time to time revise or re-issue this guidance.
2. Public bodies, prescribed persons and Ministers shall have regard to any guidance issued under subhead 1 in the performance of their functions under sections [6](#), [7](#) or [8](#).

#### **Explanatory note:**

This Head replaces [section 21](#)(3) and(4) of the Protected Disclosures Act, which provided that the Minister for Public Expenditure & Reform could issue guidelines for public bodies in respect of establishing and maintaining procedures for handling protected disclosures made by their staff under section 6 of the Act.

This Head extends this to provide that the Minister may issue guidelines in respect of disclosures made to prescribed persons under section 7 of the Act and disclosures made by workers in public bodies to Ministers under section 8 of the Act.

## Head 26 Reporting

Provide that:

The Principal Act is amended by substituting the following for [section 22](#):-

### “Annual report

21. (1) Every public body and prescribed person shall prepare and publish not later than 30 June in each year a report in relation to the immediately preceding calendar year in a form that does not enable the identification of persons involved containing information in relation to:
- (a) the number of protected disclosures they have received under each of sections [6](#), [7](#) and [8](#);
  - (b) the number of investigations and proceedings initiated as a result of such protected disclosures and their outcome;
  - (c) if ascertained, the estimated financial damage and the amounts recovered following investigations and proceedings related to the relevant wrongdoings reported, where relevant; and
  - (d) any such other information relating to protected disclosures and the action taken as may be requested by the Minister from time to time.
- (2) The Minister may specify the format of the annual reports described at subhead (1).
- (3) Where a public body publishes an annual report of its activities, the report described in subhead (1) may be included as a chapter in this annual report.
- (4) A public body shall publish an annual report in the manner provided for in this section even if it has received no protected disclosures in the year concerned.
- (4) Each prescribed person shall submit a copy of the report described in subhead (1) to the Minister not later than 30 days after its publication.
- (5) The Minister shall transmit the reports referred to in subhead (4) to the European Commission in aggregated form every year.”

#### **Explanatory note:**

This Head transposes the reporting obligations that apply to prescribed persons under Article 17 of the Directive.

This Head also amends section 21 of the Protected Disclosures Act, which provides for all public bodies, to prepare annual reports on the numbers of protected disclosures received, to align these requirements with the Directive. The proposed amendment



also clarifies that the annual report should cover the preceding calendar year and, for administrative efficiency, that the report can be incorporated into the body's annual report, where one is published.