



AN BILLE UM CHOSAINN SCEITHIRÍ, 1999
WHISTLEBLOWERS PROTECTION BILL, 1999

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to provide protection from civil liability to employees who make certain disclosures “reasonably and in good faith” in relation to the conduct of the business and affairs of their employers. The Bill also prohibits penalisation of employees by their employers in such circumstances. It sets out the persons to whom disclosure may be made and the categories of matters in relation to which such disclosure is permissible.

Provisions of the Bill

Section 1 defines terms used in the Bill. It lists the chief regulatory authorities of the State to whom or which disclosures may be made under the Bill. These are—

- the Central Bank,
- the Comptroller and Auditor General,
- the Data Protection Commissioner,
- the Environmental Protection Agency,
- the Garda Síochána,
- the Health and Safety Authority,
- the Information Commissioner,
- the Ombudsman,
- the Public Offices Commission,
- the Revenue Commissioners, and
- any other public body on whom or which regulatory, supervisory or investigative functions, in relation to the matter the subject of a protected disclosure, stand conferred by or under any enactment.

Section 2 provides that a disclosure of information shall be a protected disclosure if it is made in accordance with *section 3* and the information disclosed amounts or relates to, or supports, an allegation—

- that a criminal offence has been, is being or is likely to be committed,
- that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject,
- that a miscarriage of justice has occurred, is occurring or is likely to occur,

- that the health and safety of any individual has been, is being or is likely to be endangered,
- that the environment has been, is being or is likely to be damaged, or
- that information tending to show that any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

Section 3 provides that a disclosure of information to which *section 2* relates shall be a protected disclosure if an employee makes the disclosure “reasonably and in good faith”—

- to his or her employer,
- where the employee reasonably believes that the relevant failure relates solely or mainly to the conduct of a person other than his or her employer, or to any other matter for which a person other than his or her employer has legal responsibility, to that other person,
- in the course of obtaining legal advice,
- where the employee is an employee of a public body in relation to which functions stand conferred on a Minister of the Government, to that Minister of the Government,
- where the employee believes that functions of regulation, supervision or investigation in relation to the relevant failure stand conferred on a public body, to an appropriate officer of that public body, or
- where the relevant failure is of an exceptionally serious nature and, in all the circumstances of the case it is reasonable to do so, to some other person.

In determining whether it is reasonable for an employee to make a disclosure to “some other person”, that is, someone other than an individual working for a State agency with supervisory, regulatory or investigative functions, regard shall be had to—

- whether the employee has made the disclosure for personal gain,
- whether the employee reasonably believed that he or she would be penalised or otherwise subjected to a detriment if the disclosure was made under any other paragraph of that subsection,
- whether the employee reasonably believed that functions in relation to the investigation of the relevant failure did not stand conferred on any public body,
- whether the employee reasonably believed that it was likely that evidence relating to the relevant failure would be concealed or destroyed,
- whether the employee had previously made a disclosure of substantially the same information and, if so, the outcome of such previous disclosure (if any), and
- the identity of the person to whom the disclosure is made.

Section 4 provides protection from civil liability for employees who make protected disclosures. *Subsection (3)* is a saving provision which makes it clear that the statutory immunity provided for employees does not change in any way the defences already available under common law or any other statute.

Section 5 provides protection for employees who make protected disclosures from discrimination in their employment up to and including dismissal. An avenue of redress for such an employee is by way of complaint to a rights commissioner.

There is also provision for an appeal from the decision of the rights commissioner by either party to the Employment Appeals Tribunal. The section provides that the rights commissioner shall investigate the complaint and may direct specific action to be taken by an employer who has contravened *subsection (1)*. He or she may direct the employer to take specific steps, for example, to re-instate, re-engage or pay compensation to an employee who was penalised by way of dismissal. A time limit for lodging a complaint is provided for in this section.

This section also provides that in respect of an unfair dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 1993, relief may not be granted to an employee in respect of that dismissal both under this section and under the Unfair Dismissals Acts.

Insofar as appeals and enforcement are concerned, the provisions of section 7(3) to 7(7)(a) and sections 8 to 10 of the Terms of Employment (Information) Act, 1994, shall apply, as they apply for the purposes of that Act, with modifications as detailed in this Bill.

Section 6 contains the short title of the Bill and states that the Bill shall come into operation one month after its passing.

*An Teachta Pádraic Ó Coinín,
Márta, 1999.*