



AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ) 2008
PREVENTION OF CORRUPTION (AMENDMENT) BILL 2008

Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas

ARRANGEMENT OF SECTIONS

Section

1. Definition.
 2. Amendment of section 1 of Prevention of Corruption Act 1906.
 3. Amendment of section 7 of Act of 2001.
 4. Insertion of new section 8A into Act of 2001.
 5. Amendment of section 9 of Act of 2001.
 6. Insertion of new Schedules into Act of 2001.
 7. Short title and collective citation.
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ACTS REFERRED TO

Companies Acts

Criminal Procedure Act 1967	1967, No. 12
Debtors (Ireland) Act 1840	3 & 4 Vict., c.105
Garda Síochána Act 2005	2005, No. 20
Petty Sessions (Ireland) Act 1851	14 & 15 Vict., c. 93
Prevention of Corruption (Amendment) Act 2001	2001, No. 27
Prevention of Corruption Act 1906	6 Edw. 7, c. 34
Prevention of Corruption Acts 1889 to 2005	
Protection of Employees (Fixed-Term Work) Act 2003	2003, No. 29
Unfair Dismissals Act 1977	1977, No. 10
Unfair Dismissals Acts 1977 to 2007	



AN BILLE UM ÉILLIÚ A CHOSC (LEASÚ) 2008
PREVENTION OF CORRUPTION (AMENDMENT) BILL 2008

BILL

entitled

5 AN ACT TO AMEND THE PREVENTION OF CORRUPTION
ACT 1906 AND THE PREVENTION OF CORRUPTION
(AMENDMENT) ACT 2001, AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

10 **1.**—In this Act, “Act of 2001” means the Prevention of Corruption Definition.
(Amendment) Act 2001.

2.—Section 1 (inserted by section 2 of the Act of 2001) of the Amendment of
Prevention of Corruption Act 1906 is amended— section 1 of
Prevention of
Corruption Act
1906.

15 (a) in subsection (2), by substituting “, consideration or advan-
tage” for “or consideration”, and

(b) in subsection (5)—

(i) in the definition of “agent”—

(I) in paragraph (c), in subparagraph (ix), by delet-
ing “and”, and

20 (II) in paragraph (c), by substituting the following
subparagraphs for subparagraph (x):

25 “(x) any other person employed by or
acting on behalf of the public
administration of any state
(other than the State), including
a person under the direct or
indirect control of the govern-
ment of any such state, and

30 (xi) a member of, or any other person
employed by or acting for or on
behalf of, any international
organisation established by an
international agreement between

states to which the State is not a party;”,

and

(ii) by inserting the following definitions:

“ ‘corruptly’ includes acting with an improper purpose 5
personally or by influencing another person, whether
by means of making a false or misleading statement,
by means of withholding, concealing, altering or
destroying a document or other information, or by 10
any other means;

‘state’, in relation to a state other than the State,
includes—

(a) a territory, whether in the state or outside 15
it, for whose external relations the state or
its government is wholly or partly
responsible,

(b) a subdivision of the government of the
state, and

(c) a national, regional or local entity of the 20
state.”.

Amendment of
section 7 of Act of
2001.

3.—Section 7 of the Act of 2001 is amended—

(a) in subsection (1)—

(i) by inserting “(whether or not the person is an agent)”
after “where a person”, and

(ii) by substituting “the relevant section” for “section 1 25
(inserted by section 2 of this Act) of the Act of
1906”,

and

(b) by substituting the following subsections for subsection 30
(2):

“(2) Subsection (1) shall apply only where the person
concerned is—

(a) an Irish citizen,

(b) an individual who is ordinarily resident in the 35
State,

(c) a company registered under the Companies
Acts,

(d) any other body corporate established under a
law of the State, or

(e) a relevant agent in any case where the relevant 40
agent does not fall within any of paragraphs (a)
to (d).

(3) In this section—

‘agent’ has the meaning assigned to it by subsection (5) of the relevant section;

‘ordinarily resident in the State’, in relation to an individual, means the individual has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence concerned under subsection (1);

‘relevant agent’ means a person who falls within paragraph (b) of the definition of ‘agent’ in subsection (5) of the relevant section;

‘relevant section’ means section 1 (inserted by section 2 of this Act and as amended by section 2 of the *Prevention of Corruption (Amendment) Act 2010*) of the Act of 1906.”.

15 4.—The Act of 2001 is amended by inserting the following section after section 8: Insertion of new section 8A into Act of 2001.

“Protection for persons (including employees) reporting offences under *Prevention of Corruption Acts 1889 to 2010*.

8A.—(1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to an appropriate person of his or her opinion that an offence under the *Prevention of Corruption Acts 1889 to 2010* may have been or may be being committed unless—

(a) in communicating his or her opinion to that appropriate person did so—

(i) knowing it to be false, misleading, frivolous or vexatious, or

(ii) reckless as to whether it was false, misleading, frivolous or vexatious,

or

(b) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading.

(2) The reference in subsection (1) to liability in damages shall be construed as including a reference to liability to any other form of relief.

(3) A person who makes a communication under subsection (1), which the person knows to be false, that a person may have committed or may be committing an offence under the *Prevention of Corruption Acts 1889 to 2010* shall be guilty of an offence.

(4) Subsection (1) is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the

communication by a person to another (whether that other person is an appropriate person or not) of an opinion of the kind referred to in subsection (1).

(5) An employer shall not penalise or threaten 5
penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for—

(a) having formed an opinion of the kind 10
referred to in subsection (1) and communicated it, whether in writing or otherwise, to an appropriate person unless the employee—

(i) in communicating his or her 15
opinion to that appropriate person did so—

(I) knowing it to be false, misleading, frivolous or vexatious, or

(II) reckless as to whether it was 20
false, misleading, frivolous or vexatious,

or

(ii) in connection with the communi- 25
cation of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading,

or

(b) giving notice of his or her intention to 30
do the thing referred to in paragraph (a).

(6) Schedule 1 shall have effect in relation to an alleged contravention of subsection (5).

(7) An employer who contravenes subsection 35
(5) shall be guilty of an offence.

(8) A person guilty of an offence under subsection (3) or (7) shall be liable—

(a) on summary conviction, to a fine not 40
exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine 45
not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both.

(9) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence referred to in subsection (8) as if, in lieu of the penalties

5 specified in subsection (3)(a) of that section, there were specified therein the penalties provided for in subsection (8)(a) and the reference in subsection (2)(a) of that section to the penalties provided for by subsection (3) of that section shall be construed and have effect accordingly.

10 (10) Any person who, upon examination on oath or affirmation authorised under paragraph 3(1) of Schedule 1, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

20 (11) A person to whom a notice under paragraph 3(2) of Schedule 1 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 shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

25 (12) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

- 30 (a) a person named in the document was, by a notice under paragraph 3(2) of Schedule 1, 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,
- 35 (b) a sitting of the Labour Court was held on that day and at that time and place, and
- 40 (c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

45 shall, in a prosecution of the person under subsection (11), be evidence of the matters so stated without further proof unless the contrary is shown.

(13) For the purposes of this section, a reference to ‘dismissal’ includes—

- 50 (a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and
- (b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being

deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

(14) Schedule 2 shall have effect for the purposes of a communication referred to in this section made to an appropriate person who is a confidential recipient. 5

(15) Paragraphs (a), (c), (d), (e) and (f) of the definition of 'penalisation' in subsection (16) shall not be construed in a manner which prevents an employer from— 10

(a) ensuring that the business concerned is carried on in an efficient manner, or

(b) taking any action required for economic, technical or organisational reasons. 15

(16) In this section—

'appropriate person', in relation to a communication referred to in this section made by a person, means a communication to— 20

(a) in any case, a member of the Garda Síochána,

(b) in any case where the opinion concerned of the kind referred to in subsection (1) was formed in the course of the person's employment— 25

(i) the person's employer, or

(ii) a person nominated by such employer as the person to whom a communication of that kind may be made, 30

(c) without prejudice to the generality of paragraphs (a) and (b), in any case where the person is in a state other than the State— 35

(i) a diplomatic or consular officer of the State who is in that state, or

(ii) a member of a law enforcement agency of that state, 40

or

(d) in any case where the person wishes to make the communication in confidence, to a confidential recipient;

'confidential recipient' has the meaning assigned to it by paragraph 1 of Schedule 2; 45

‘contract of employment’ means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

5 ‘employee’ means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

10 ‘employer’, in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

- 15
- 20 (a) a person (other than an employee of that person) under whose control and direction an employee works, and
 - (b) where appropriate, the successor of the employer or an associated employer of the employer;

25 ‘penalisation’ means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- 30
- (a) suspension, lay-off or dismissal,
 - (b) the threat of suspension, lay-off or dismissal,
 - (c) demotion or loss of opportunity for promotion,
 - 35 (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
 - (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
 - 40 (f) unfair treatment, including selection for redundancy,
 - (g) coercion, intimidation or harassment,
 - (h) discrimination, disadvantage or adverse treatment,
 - 45 (i) injury, damage or loss, and
 - (j) threats of reprisal.”.

5.—The Act of 2001 is amended by substituting the following
section for section 9:

“Offences —
general.

9.—(1) Where an offence under the relevant
Acts has been committed by a body corporate and
is proved to have been committed with the consent,
connivance or approval of, or to have been
attributable to any neglect on the part of, a person
who was either— 5

(a) a director, manager, secretary or other
similar officer of the body corporate, 10
or

(b) a person purporting to act in any such
capacity,

that person shall also be guilty of an offence and
liable to be proceeded against and punished as if 15
the person were guilty of the first-mentioned
offence.

(2) Where the affairs of a body corporate are
managed by its members, subsection (1) shall
apply in respect of the acts or defaults of a 20
member in connection with the member’s func-
tions of management as if the member were a
director or manager of the body corporate.

(3) Subsections (1) and (2) shall, with any
necessary modifications, apply in respect of 25
offences under the relevant Acts committed by an
unincorporated body.

(4) Notwithstanding section 10(4) of the Petty
Sessions (Ireland) Act 1851, summary proceedings
for an offence under the relevant Acts to which 30
that provision applies may be instituted—

(a) within 12 months from the date on
which the offence was committed, or

(b) within 6 months from the date on which
evidence sufficient, in the opinion of 35
the person instituting the proceedings,
to justify proceedings comes to that
person’s knowledge,

whichever is the later, provided that no such pro-
ceedings shall be commenced later than 2 years 40
from the date on which the offence concerned
was committed.

(5) For the purposes of subsection (4), a certi-
ficate signed by or on behalf of the person initiating
the proceedings as to the date on which evidence 45
referred to in that subsection came to his or her
knowledge shall be evidence of that date and, in
any legal proceedings, a document purporting to
be a certificate under this subsection and to be so
signed shall be admitted as evidence without proof 50
of the signature of the person purporting to sign
the certificate, unless the contrary is shown.

(6) In this section, ‘relevant Acts’ means the *Prevention of Corruption Acts 1889 to 2010*.”.

6.—The Act of 2001 is amended by inserting the following Schedules after section 10:

Insertion of new Schedules into Act of 2001.

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“SCHEDULE 1

REDRESS FOR CONTRAVENTION OF SECTION 8A(5)

Complaints to rights commissioner.

10 1. (1) An employee (or, in the case of an employee who has not reached the age of 18 years, the employee’s parent or guardian with his or her consent) or, 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 8A(5) in relation to the employee and it shall not be necessary for the employee to have
15 at least one year’s continuous service with the employer concerned in order to present such complaint.

(2) Where a complaint under subparagraph (1) is made, the rights commissioner shall—

- 20 (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) notify the parties of that decision.

25 (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, as the case may be, was not well founded;
- 30 (b) require the employer to take a specified course of action, which may include, in a case where the penalisation constitutes a dismissal within the meaning of section 8A(13), re-instatement or re-engagement;
- 35 (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks’ remuneration in respect of the employee’s employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977;

40 and the references in clauses (b) and (c) to an 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.

45 (4) Subject to subparagraph (10), a rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months

beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding subparagraph (4), a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in subparagraph (4) (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to exceptional circumstances. 5

(6) 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 Enterprise, Trade and Innovation. 10

(7) A copy of a notice under subparagraph (6) shall be given to the other party concerned by the rights commissioner. 15

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

(9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under subparagraph (2). 20

(10) Where a delay by an employee in presenting a complaint under this paragraph is due to any misrepresentation by the employer, subparagraph (4) 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. 25

Appeals from decisions 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 give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties. 30 35

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 42 days (or such greater period as the 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 clauses (e) and (f) of subparagraph (4) and stating the intention of the party concerned to appeal against the decision. 40

(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. 45

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely: 50

- (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;
- 5 (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 sub-paragraph (2); and
- 10 (f) any matters consequential on, or incidental to, the foregoing matters.

(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: supplemental 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,

or both.

(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 decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, 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 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 aforesaid), make a determination to the like 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), (b), (c), (d), (e) and (f) of subparagraph (4) of paragraph 2 (not being a determination as respects a particular appeal under that paragraph) and subparagraph (5). 5

(7) In proceedings under this Schedule before a rights commissioner or the Labour Court in relation to a complaint that section 8A(5) has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned. 10
15

(8) (a) If penalisation of an employee, in contravention of section 8A(5), constitutes a dismissal of the employee, as referred to in paragraph (a) of the definition of 'penalisation' in section 8A(16), 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 his or her consent) may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal and, if the employee or his or her parent or guardian, as the case may be, does so, such dismissal may not be presented to a rights commissioner under paragraph 1(1). 20
25

(b) If an employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with his or her consent) presents a complaint to a rights commissioner under paragraph 1(1) in respect of a dismissal referred to in clause (a), the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal. 30
35

Enforcement of determinations of Labour Court. 40

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 28 days from the date on which the determination is communicated to the parties, the Circuit Court shall, on application made to it in that behalf by— 45

(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 his or her consent), or

(b) with the consent of the employee, any trade union of which the employee is a member, 50

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the

employer to carry out the determination in accordance with its terms.

5 (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 expiration of the time 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 such an appeal is abandoned, be read as a reference to the date of such abandonment.

10 (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 to the employee concerned 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 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 complied with.

15 (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.

20 *Interpretation.*

25 5. Section 8A(16) shall apply to the interpretation of this Schedule as it applies to the interpretation of section 8A.

30 SCHEDULE 2

PROVISIONS APPLICABLE IN CASE OF
COMMUNICATIONS REFERRED TO IN SECTION 8A
MADE IN CONFIDENCE

Definitions.

35 1. In this Schedule—

‘alleged relevant offence’, in relation to a confidential communication, means the offence under the *Prevention of Corruption Acts 1889 to 2010* alleged in the communication;

40 ‘appropriate person’ has the meaning assigned to it by section 8A(16);

‘civilian’ means a member of the civilian staff of the Garda Síochána;

‘Commissioner’ means—

(a) the Commissioner of the Garda Síochána, or

45 (b) a deputy commissioner, or an assistant commissioner, authorised under section 32 of the Garda Síochána

Act 2005 to perform the functions of the Commissioner;

‘confidential communication’ means a communication referred to in section 8A made to an appropriate person who is a confidential recipient; 5

‘confidential communicator’, in relation to a confidential communication, means the person who made the confidential communication;

‘confidential recipient’ means a person appointed under paragraph 2 to receive confidential communications; 10

‘member’ means—

- (a) a member of the Garda Síochána, or
- (b) a member of the Police Service of Northern Ireland appointed to a rank in the Garda Síochána under section 52 or 53 of the Garda Síochána Act 2005. 15

Appointment of confidential recipients.

2. The Commissioner may appoint a member or civilian, or members or civilians, as a confidential recipient or recipients to receive confidential communications.

Confidential communication. 20

3. (1) Where a confidential communication has been made to a confidential recipient, the confidential communicator shall disclose to the recipient any document, record or information in his or her possession or control which relates to the alleged relevant offence. 25

(2) Information disclosed under subparagraph (1) shall be in such form as the confidential recipient may require.

(3) A confidential communication may not be made anonymously.

Transmission of confidential communication. 30

4. Where a confidential communication has been made to a confidential recipient, the recipient shall, as soon as is practicable, transmit the communication to the Commissioner.

Commissioner, etc., must take steps to ensure that identity of confidential communicator is not disclosed. 35

5. Where a confidential communication has been transmitted to the Commissioner pursuant to paragraph 4, the Commissioner, and any person acting on his or her behalf, in examining the communication or investigating the alleged relevant offence, shall take all practicable steps to ensure that the identity of the confidential communicator is not disclosed. 40

Protection of confidential communicator’s identity.

6. (1) Where a confidential communication has been made to a confidential recipient, the recipient may disclose the identity

of the confidential communicator to the Commissioner only if each one of the following provisions is complied with:

(a) the Commissioner—

5 (i) must be satisfied that knowledge of the identity of the communicator is necessary for the proper examination of the communication or the investigation of the alleged relevant offence;

(ii) must inform the recipient of his or her reasons for being so satisfied;

10 (b) the recipient must be satisfied that the Commissioner, before informing the recipient under clause (a)(ii), has taken all practicable steps to advance the examination of the communication or the investigation of the alleged relevant offence;

15 (c) the recipient must have informed the communicator of the situation and considered the communicator's views regarding the disclosure of his or her identity; and

20 (d) the recipient must further be satisfied that, having regard to all the circumstances, the disclosure is necessary for the proper examination of the communication or the investigation of the alleged relevant offence.

25 (2) Where a confidential communication has been transmitted to the Commissioner pursuant to paragraph 4, the identity of the confidential communicator may be disclosed by the Commissioner to—

(a) a member,

(b) a civilian, or

30 (c) the Director of Public Prosecutions,

only where the Commissioner is satisfied that the disclosure is necessary for the proper examination of the communication or the investigation or prosecution of the alleged relevant offence.

35 (3) Subject to subparagraph (4), any member or civilian to whom the identity of a confidential communicator has been disclosed under subparagraph (2) may not disclose the identity to any other person without the authorisation in writing of the Commissioner.

40 (4) The Commissioner may give an authorisation referred to in subparagraph (3) only where he or she is satisfied that it is necessary for the proper examination of the confidential communication or the investigation or prosecution of the alleged relevant offence.

45 (5) Unless otherwise authorised under this paragraph, a confidential recipient, a member, or a civilian, to whom the identity of a confidential communicator has been disclosed may disclose the identity only with consent in writing of the confidential communicator or under an order of a court.”.

Short title and
collective citation.

7.—(1) This Act may be cited as the Prevention of Corruption
(Amendment) Act 2010.

(2) The Prevention of Corruption Acts 1889 to 2005 and this Act
may be cited together as the Prevention of Corruption Acts 1889
to 2010.

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