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**AN BILLE UM CHOSAINT SCEITHIRÍ, 2011**  
**WHISTLEBLOWERS PROTECTION BILL 2011**

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*Mar a tionscnaíodh*  
*As initiated*

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**ARRANGEMENT OF SECTIONS**

Section

1. Interpretation.
  2. Protected disclosures.
  3. Persons to whom protected disclosure may be made.
  4. Protection of employee from civil liability for having made protected disclosure.
  5. Protection of employees from penalisation for having made protected disclosure.
  6. Short title and commencement.
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ACTS REFERRED TO

Official Secrets Act 1963

1963, No. 1

Terms of Employment (Information) Act 1994

1994, No. 5

Unfair Dismissals Acts 1997 to 2005



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# **BILL**

*entitled*

5 AN ACT TO PROVIDE PROTECTION FROM CIVIL LIABILITY OR PENALISATION TO EMPLOYEES WHO MAKE CERTAIN PROTECTED DISCLOSURES IN RELATION TO THE AFFAIRS OF THEIR EMPLOYERS AND TO PROVIDE FOR RELATED MATTERS.

10 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act, unless the context otherwise requires—

Interpretation.

“the Act of 1994” means the Terms of Employment (Information) Act 1994;

15 “appropriate officer” means a person who is, or who is a member or officer of—

- (a) the Central Bank or the Financial Services Regulatory Authority, as appropriate,
- (b) the Comptroller and Auditor General,
- (c) the Data Protection Commissioner,
- 20 (d) the Environmental Protection Agency,
- (e) the Garda Síochána,
- (f) the Health and Safety Authority,
- (g) the Information Commissioner,
- (h) the Ombudsman,
- 25 (i) the Standards in Public Office Commission,
- (j) the Revenue Commissioners, and
- (k) 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;
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“employee” and “employer” have the same meanings as they have in the Act of 1994;

“relevant failure”, in relation to a protected disclosure, means the matters falling within *subparagraphs (i) to (vi) of section 2(b)*.

Protected disclosures.

**2.**—A disclosure of information shall be a protected disclosure for the purposes of this Act if— 5

- (a) it is made in accordance with *section 3*, and
- (b) the information disclosed amounts or relates to, or supports, an allegation—
  - (i) that a criminal offence has been, is being or is likely to be committed, 10
  - (ii) 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,
  - (iii) that a miscarriage of justice has occurred, is occurring or is likely to occur, 15
  - (iv) that the health and safety of any individual has been, is being or is likely to be endangered,
  - (v) that the environment has been, is being or is likely to be damaged, or 20
  - (vi) 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.

Persons to whom protected disclosure may be made.

**3.**—(1) Notwithstanding any provision of the Official Secrets Act 1963, 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— 25

- (a) to his or her employer,
- (b) where the employee reasonably believes that the relevant failure relates solely or mainly to— 30
  - (i) the conduct of a person other than his or her employer, or
  - (ii) any other matter for which a person other than his or her employer has legal responsibility, 35
- to that other person,
- (c) in the course of obtaining legal advice,
- (d) 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, 40
- (e) 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

- (f) 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.

(2) In determining whether it is reasonable for an employee to make a disclosure under *subsection (1)(f)*, regard shall be had to—

- (a) whether the employee has made the disclosure for personal gain,

- (b) 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,

- (c) whether the employee reasonably believed that functions in relation to the investigation of the relevant failure did not stand conferred on any public body,

- (d) whether the employee reasonably believed that it was likely that evidence relating to the relevant failure would be concealed or destroyed,

- (e) 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

- (f) the identity of the person to whom the disclosure is made.

4.—(1) An employee who, apart from this section, would be so liable shall not be liable in damages in respect of the making of a protected disclosure.

Protection of employee from civil liability for having made protected disclosure.

(2) The reference in *subsection (1)* to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief.

(3) This section is in addition to, and not in substitution for, any privilege or defence available in legal proceedings by virtue of any other enactment or rule of law.

5.—(1) An employer shall not penalise an employee for having made a protected disclosure.

Protection of employees from penalisation for having made protected disclosure.

(2) In proceedings under this section before a rights commissioner or the Employment Appeals Tribunal in relation to a complaint that *subsection (1)* has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in making the disclosure concerned.

(3) If a penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1997 to 2005, relief may not be granted to the employee in respect of that penalisation both under this section and those Acts.

(4) An employee may present a complaint to a rights commissioner that his or her employer has contravened *subsection (1)* in

relation to him or her and, if he or she does so, the commissioner shall give the parties an opportunity to be heard by the commissioner and to present the commissioner with any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties. 5

(5) A decision of a rights commissioner under *subsection (4)* shall do one or more of the following—

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with *subsection (1)* and, 10 for that purpose, require the employer to take specified steps,
- (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, 15

and the references in the foregoing paragraphs 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. 20

(6) For the purposes of this section—

- (a) subsections (3) to (6) and subsection (7)(a) of section 7 of the Act of 1994 shall apply in relation to a complaint presented under this section as they apply in relation to a complaint presented under subsection (1) of that 25 section 7, with the following modifications, namely—

- (i) the deletion in that subsection (3) of all the words from “if it is presented” to the end of that subsection and the substitution of “unless it is presented to him within the period of 12 months beginning on the date 30 of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period, not exceeding 6 35 months from the expiration of the said period of 12 months, as the rights commissioner considers reasonable.”,

- (ii) the substitution in that subsection (6) of a reference to a decision for the reference to a recommendation, 40

and any other necessary modifications,

- (b) sections 8 to 10 of the Act of 1994 shall apply as they apply for the purposes of that Act, with the following modifications, namely—

- (i) the substitution in those provisions of references to a 45 decision for references to a recommendation,

- (ii) the substitution in section 9 of the Act of 1994 of—

- (I) references to the Circuit Court for references to the District Court, and

(II) the following subsection for subsection (3)—

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“(3) An application under this section 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 or business.”,

and any other necessary modifications.

**6.—**(1) This Act may be cited as the Whistleblowers Protection Act 2011. Short title and commencement.

10 (2) This Act shall come into operation one month after its passing.