



Údarás Forfheidhmithe Corparáideach
Corporate Enforcement Authority

**NOTICE UNDER SECTION 7A(10) OF THE
PROTECTED DISCLOSURES ACT 2014**

Making a Protected Disclosure to the CEA

The Protected Disclosures Act 2014 (the “**Principal Act**”) protects “*workers*” from penalisation¹ where they make a protected disclosure (the act of making a disclosure is sometimes also referred to as “*whistleblowing*”) within the meaning of the Principal Act. The Principal Act sets out how a worker can make such a disclosure to a number of persons, including their employer as well as to prescribed external bodies in appropriate circumstances. The Principal Act was amended by the Protected Disclosures (Amendment) Act 2022 (the “**2022 Act**”) and extended to new categories of worker. The Principal Act is hyperlinked [here](#).

To be eligible for the protections afforded by protected disclosures legislation, the person making the disclosure must be a “*worker*”. The term “*worker*”, in addition to current employees and individuals working under contract, now includes past and present employees, independent contractors, persons on work experience, shareholders, volunteers, trainees, board members, job applicants, past or present members of An Garda Síochána, past or present members of the Defence Forces, and past or present members of the Civil Service. A full list of what is defined as a “*worker*” is set out in the 2022 Act, which is hyperlinked [here](#).

The information being disclosed, to meet the requirements of the Principal Act must contain “*relevant information*” in relation to a “*relevant wrongdoing*”. Both of these terms are defined by the Principal Act.

“*Relevant information*” under the Act is defined as (a) showing one or more relevant wrongdoings, and (b) the information came to the attention of the worker in a work-related context².

For the purpose of the Principal Act, the following are “*relevant wrongdoings*”:

- a) that an offence has been, is being or is likely to be committed;
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services;
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

¹ The Protected Disclosures Act, 2014 provides protections to employees who make protected disclosures. The legislation provides protections and remedies for reporting persons from penalisation and unfair dismissal in relation to their making a protected disclosure.

² This latter term is broadly defined to include training, interviews and employer arranged social events

- d) that the health or safety of any individual has been, is being or is likely to be endangered;
- e) that the environment has been, is being or is likely to be damaged;
- f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
- g) that an act or omission by, or on behalf of a, public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
- h) that a breach of certain provisions of European Union law has occurred, is occurring or is likely to occur³; or
- i) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

Section 7 of the Principal Act provides that protected disclosures may be made to certain external persons or bodies referred to as “*prescribed persons*” in the Act. The Corporate Enforcement Authority (the “**CEA**”) is a “*prescribed person*” under section 7 of the Principal Act⁴ authorised to receive protected disclosures from workers regarding all matters relating to the CEA’s functions, as set out under section 944D of the Companies Act 2014, hyperlinked [here](#).

The functions for which the CEA is a prescribed person and may receive a protected disclosure are as follows:

- (a) to encourage compliance with this Act,
- (b) to investigate—
 - (i) instances of suspected offences under this Act, and
 - (ii) instances otherwise of suspected non-compliance with this Act or with the duties and obligations to which companies and their officers are subject,
- (c) to enforce this Act, including by the prosecution of offences by way of summary proceedings,
- (d) at the discretion of the Authority, to refer cases to the Director of Public Prosecutions where the Authority has reasonable grounds for believing that an indictable offence under this Act has been committed,
- (e) to exercise, in so far as the Authority considers it necessary or appropriate, a supervisory role over the activity of liquidators and receivers in the discharge of their functions under this Act,
- (f) for the purpose of ensuring the effective application and enforcement of obligations, standards and procedures to which companies and their officers are subject, to perform such other functions in respect of any matters to which this Act relates as the Minister considers appropriate and may by order confer on the Authority,
- (g) to perform such other functions for the purpose referred to in *paragraph (f)* as may be assigned to the Authority under this Act or any other Act,

³ “*Breach*” is defined in Section 4 of the 2022 Act and includes categories such as public procurement and protection of the environment. The full list is contained in the hyperlink to the 2022 Act, above.

⁴ Prescribed by Statutory Instrument 367 of 2020. This SI contains a list of prescribed persons.

(h) to act under *Chapter 2* as a member of the Supervisory Authority and, if appointed under *section 907*, act as a director of that body, and

(i) to perform functions transferred to the Authority under *section 944E*.

This means that “workers” may make protected disclosures to the CEA regarding, among other things, compliance with, and/or the investigation and/or enforcement of the Companies Act 2014.

It is important to note, therefore, that a disclosure to the CEA is only a protected disclosure (that is, attracts the protections afforded to a protected disclosure), under section 7, if the person making the disclosure reasonably believes that the:

- **relevant wrongdoing relates to matters concerning the functions of the CEA; and**
- **the person making the disclosure reasonably believes that the information disclosed, and any allegation contained in it, are substantially true.**

All disclosures or complaints, whether they meet the threshold of protected disclosure legislation, or otherwise, are taken seriously by the CEA, and all complaints, referrals and disclosures received are carefully examined.

Grievances

The 2022 Act specifically excludes grievances about interpersonal conflicts between the reporting person and another worker or about his/her employer which relate exclusively to the reporting person⁵.

Confidentiality

The CEA has a legal obligation to protect the identity of the reporting person who makes a protected disclosure and not to disclose any information that might identify the reporting person, subject to the exceptions outlined below.

There are limited exceptions to the general principle of confidentiality and, for example the CEA may disclose the identity of the reporting person where the reporting person provides their consent.

There are also certain limited circumstances provided for in the legislation, when the CEA may, or may be required to (where there is a legal basis for doing so), disclose the reporting person’s identity and/or identifying information. This may arise as follows:

Where the disclosure is made by a worker under the 2014 Act and:

- the CEA demonstrates that it took all reasonable steps to avoid disclosing the identifying information; or
- the CEA reasonably believes that the reporting person does not object to the disclosure of the identifying information; or
- the CEA reasonably believes that the disclosure of the identifying information is necessary for; (a) the effective investigation of the wrongdoing disclosed or; (b) the

⁵ Section 5A of the 2022 Act

prevention of serious risk to the security of the state, public health, public safety or the environment or; (c) the prevention of a crime or the prosecution of a criminal offence; or

- the disclosure of the identifying information by the CEA was necessary in the public interest or required by law (e.g. in the context of court proceedings).

It may also be that a disclosure merits further examination or investigation, but the CEA is not the appropriate body to conduct such further examination (e.g., because the subject matter comes within the remit of another regulatory or enforcement agency).

In some circumstances, the CEA may suggest to the worker that they might wish to refer their concerns to another appropriate body. In other circumstances, it may be more appropriate for the CEA to refer the concerns to that body directly. In these circumstances, the CEA will send the disclosure to the designated person in the second body. It will be sent in a secure manner and in a way that will not compromise the security and confidentiality of the report.

Disclosures made to the CEA are confidential and, as such, the rights given to data subjects may be restricted in accordance with section 16B of the Principal Act in appropriate circumstances.

Anonymity

A disclosure may be made anonymously. However, on a practical level, it may be difficult to investigate a concern raised on an anonymous basis. Similarly, it may not be possible to apply the feedback entitlements where a reporting person has not identified themselves or left some avenue of communication open to the Authority.

Legal Advice

Whether or not a matter is a protected disclosure as defined in the Principal Act is a matter of law which, in the case of a dispute, will fall to the courts to decide.

Save in the context of a defamation action, a person making a protected disclosure is generally immune from civil liability. If prosecuted for an offence of disclosing prohibited information, the person has a defence if they reasonably believed it was protected disclosure.

The CEA is an independent statutory agency and, as such, cannot offer legal advice. If you are considering making a disclosure, the CEA recommends that you give serious consideration to seeking independent legal advice in advance of doing so.

The CEA cannot intervene in employment disputes and similarly cannot provide legal advice in relation to employee protections under the legislation. If you are considering making a protected disclosure but are unsure of your legal rights, you should contact a lawyer.

Office of the Protected Disclosures Commissioner

An Office of the Protected Disclosures Commissioner has been granted powers and responsibilities by the 2022 Act. The Protected Disclosures Commissioner can receive protected disclosures, and redirect any disclosure to an appropriate prescribed person, including the CEA.

How to make a disclosure

To make a protected disclosure to the CEA, please email protected.disclosures@cea.gov.ie, or write to the Corporate Enforcement Authority, 16 Parnell Square East, Dublin 1, D01 W5C2.

In the event of disclosure sent by post, the envelope should be clearly marked “**Private & Confidential**” and addressed for the attention of the “**Protected Disclosures Section**”.

Where possible, a disclosure should contain the following information:

- name of the individual making the disclosure and contact details;
- a statement that the information is being provided pursuant to the Principal Act;
- name of the organisation concerned;
- as much detail as possible regarding the concerns, including, to the extent possible, a description of the “*relevant wrongdoing*” (as explained earlier in this document).

Should you wish to make a verbal disclosure, please call the dedicated protected disclosures phone line and leave a confidential voicemail on +353 1 8585821. This voicemail will a message of no longer than 30 seconds duration and you should, therefore, ensure that you leave your name and contact details in order that we can revert to you.

Note that whilst voicemails are recorded, phone calls to the CEA protected disclosures phone line above are not recorded.

Should you call the telephone line out of hours and leave a message, including your contact details, we will call you back within one working day to acknowledge receipt of your disclosure. Should you raise your disclosure via e-mail, you will receive an automatic acknowledgement of receipt and we will make further contact with you thereafter, if the need arises. Should you submit your disclosure by post, you will receive a written acknowledgement within three working days of receipt (if you include your return postal address).

Further assistance regarding the making of a Protected Disclosure can be found at the following resources:

- The Office of the Protected Disclosures Commissioner - www.opdc.ie
- The Department of Public Expenditure and Reform [here](#)
- Citizens Information Board [here](#)

Feedback

The CEA will acknowledge receipt of the Report to the postal or electronic address indicated by the reporting person.

The CEA may contact the reporting person to clarify the information reported or to request additional information that may be available to the reporting person. This contact will be to the postal or electronic address of the reporting person or by telephone or to the preferred communication channel, if indicated by the reporting person.

The CEA is limited in the feedback it can provide to the reporting person and will only provide feedback where possible.

**CORPORATE ENFORCEMENT AUTHORITY
FEBRUARY 2023**