

Public Interest Disclosure (Protection) Bill

[AS INTRODUCED]

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BILL

TO

Provide protections for whistleblowers; to create offences relating to the treatment of whistleblowers and the handling of whistleblowing cases; to establish an independent body to protect whistleblowers and whistleblowing, in accordance with the public interest; to make provision for that body to set, monitor and enforce standards for the management of whistleblowing cases, to provide disclosure and advice services, to direct whistleblowing investigations and to order redress of detriment suffered by whistleblowers; to repeal the Public Interest Disclosure Act 1998; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

PROTECTED DISCLOSURES, WHISTLEBLOWERS AND RELEVANT AUTHORITIES

1 Protected disclosures

- (1) In this Act, a “protected disclosure” means any disclosure of information which, in the reasonable belief of the person making the disclosure— 5
- (a) is in the public interest; and
 - (b) tends to show that one or more of the matters in subsection (2)—
 - (i) has occurred,
 - (ii) is occurring, or
 - (iii) is likely to occur. 10
- (2) Those matters are—
- (a) the committing of a criminal offence;
 - (b) the failure of a person or relevant authority to comply with a legal obligation;
 - (c) a miscarriage of justice; 15

- (d) the endangering of the health or safety of any person;
- (e) damage to the environment;
- (f) reckless financial speculation;
- (g) the gross waste or mismanagement of public funds;
- (h) a serious misuse or abuse of authority; 5
- (i) the deliberate concealment of information tending to show any matter in paragraphs (a) to (h).

2 Whistleblowers

- (1) In this Act, a person is a “whistleblower” if they – 10
- (a) have made a protected disclosure;
 - (b) have been identified as a whistleblower or as having made a protected disclosure, whether accurately or not; or
 - (c) are considering making a protected disclosure and “whistleblowing” is construed accordingly.
- (2) A person may be a whistleblower if they are – 15
- (a) an employee or worker, including an agency or contract worker;
 - (b) a job applicant;
 - (c) undertaking a work placement or work experience;
 - (d) self-employed;
 - (e) a volunteer or intern; 20
 - (f) a trainee, whether paid or unpaid;
 - (g) a non-executive director or trustee;
 - (h) a shareholder;
 - (i) a foster carer;
 - (j) a priest or minister of religion; 25
 - (k) a Crown servant;
 - (l) a public or private office-holder;
 - (m) a supplier, partner or business associate of an employer;
 - (n) working under the supervision or direction of a contractor or supplier;
 - (o) a third person connected to a whistleblower, including a family member; 30
 - (p) a trade union representative;
 - (q) a partner in a partnership;
 - (r) receiving coaching or training;
 - (s) a user of services; 35
 - (t) a patient;
 - (u) a pupil or student;
 - (v) a parent;

- (w) a customer;
- (x) an observer or passer-by; or
- (y) any other person.

3 Duties of relevant authorities

- (1) In this Act, a “relevant authority” means— 5
 - (a) an employer;
 - (b) a body acting on behalf of a group of employers;
 - (c) a regulator; or
 - (d) a public authority.
- (2) A relevant authority must not subject a person to detriment as a consequence of that person— 10
 - (a) being a whistleblower; or
 - (b) being a close relative of a whistleblower.
- (3) Examples of detriment may include, but are not limited to— 15
 - (a) suspension, redundancy or dismissal;
 - (b) demotion or the withholding of promotion;
 - (c) changes to terms of employment;
 - (d) changes to duties;
 - (e) a reduction in pay;
 - (f) the withholding of training; 20
 - (g) a negative performance assessment or employment reference;
 - (h) a reprimand or penalty;
 - (i) moral harassment;
 - (j) discrimination, disadvantage or unfair treatment;
 - (k) failure to convert a temporary employment contract into a permanent one; 25
 - (l) failure to renew or early termination of the temporary employment contract;
 - (m) damage, including to the person’s reputation;
 - (n) financial loss, including loss of business and loss of income; 30
 - (o) sector-wide formal or informal blacklisting;
 - (p) interference with the employment of the whistleblower by another employer;
 - (q) early termination or cancellation of contract for goods or services;
 - (r) the withholding or cancellation of a professional registration or licence; 35
or
 - (s) a reduction in service levels provided.
- (4) A relevant authority must co-operate with the Whistleblowing Commission.

- (5) A relevant authority that receives a protected disclosure must handle that protected disclosure in accordance with Whistleblowing Commission standards.

PART 2

THE WHISTLEBLOWING COMMISSION

- 4 Principal duty and objectives** 5
- (1) There shall be a body corporate called the Whistleblowing Commission (in this Act referred to as “the Commission”).
- (2) The principal duty of the Commission is to protect whistleblowers and whistleblowing and ensure the concerns raised are investigated and acted on in the public interest. 10
- (3) The Commission must carry out all its work in accordance with that duty.
- (4) The objectives of the Commission are—
- (a) to ensure that concerns raised by whistleblowers are acted upon;
 - (b) to promote good corporate governance and discourage misconduct and malfeasance; 15
 - (c) to protect the public purse and ensure that wrongdoers bear the cost of wrongdoing revealed by whistleblowing;
 - (d) to promote the normalisation of whistleblowing as part of ethical governance, operating with a presumption in favour of transparency; 20
 - (e) to reduce conflict and litigation relating to whistleblowing.
- (5) The Commission must seek to achieve those objectives insofar as doing so does not conflict with its principal duty.
- (6) The Commission must carry out its functions in accordance with this section.
- 5 Functions and governance** 25
- (1) The functions of the Commission are to—
- (a) set standards of practice for whistleblowing policies and procedures (see section 6);
 - (b) monitor the compliance of organisations with those standards;
 - (c) direct relevant authorities in their investigations and, where appropriate, conduct its own investigations; 30
 - (d) enforce compliance with the standards;
 - (e) bring prosecutions for the offences in Part 3;
 - (f) provide an independent disclosure and reporting service (see section 7); 35

- (g) provide information and advice on whistleblowing; and
 - (h) promote public awareness of the importance of whistleblowing and the protections provided to whistleblowers.
- (2) The Commission shall be led by an independent executive to be known as the “Whistleblowing Commissioner” (“the Commissioner”). 5
- (3) The work of the Commission and the Commissioner shall be overseen by a board of directors, which must have a majority of independent members.
- (4) The Commission must report regularly on its exercise of its principal duty, objectives and functions in accordance with subsection (5).
- (5) Reports under subsection (4) should be made to— 10
- (a) Senedd Cymru in relation to matters within its legislative competence;
 - (b) the Scottish Parliament in relation to matters within its legislative competence;
 - (c) Parliament in relation to all other matters, including the overall approach of the Commission. 15
- (6) The Secretary of State may by regulations make further provision for the functions and governance of the Commission.

6 Standards for handling protected disclosures

- (1) The Commission must set standards for relevant authorities in carrying out their duties under section 3. 20
- (2) Standards for handling a protected disclosure must include requirements for—
- (a) preserving the anonymity of the whistleblower;
 - (b) investigation methods;
 - (c) referrals to other organisations; 25
 - (d) information to be provided to the whistleblower; and
 - (e) information to be reported to the Commission.
- (3) The Commission may set different standards—
- (a) in different sectors;
 - (b) for employers of different sizes. 30
- (4) The Commission must make provision for a whistleblowing scheme operated by a relevant authority to be accredited as meeting standards under this section (an “accredited scheme”).
- (5) Standards under this section do not come into force unless they have been approved in accordance with the procedures in section 17 (standards: 35
procedure).

7 Independent disclosure and reporting service

- (1) The Commission must conduct its own investigation into a protected disclosure made by a whistleblower if—
- (a) the whistleblower has no access to an accredited scheme;
 - (b) the whistleblower reasonably believes that they are being victimised or obstructed in their use of an accredited scheme; 5
 - (c) there is a risk of the concealment or destruction of evidence should the whistleblower use an accredited scheme; or
 - (d) there is, in the opinion of the Commissioner, an exceptionally serious and imminent risk to the public. 10
- (2) The Commission must investigate a report that a protected disclosure has not been handled in accordance with standards under section 6.

8 Investigatory powers

- (1) The Commission may require any person to provide any document or information relevant to the exercise of the Commission's functions, within a specified period. 15
- (2) The Commission may, for the purposes of investigating whether standards under section 6 are being, or have been, complied with, enter premises and undertake such inquiry as may be necessary to conduct its functions.
- (3) Section 11 (civil penalties) applies to any person who without reasonable excuse— 20
- (a) neglects or refuses to provide a document or information required under subsection (1);
 - (b) delays or obstructs the Commission exercising its power under subsection (2). 25

9 Action notices

- (1) If the Commission is of the opinion that a person—
- (a) is contravening one or more standards under section 6, or
 - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated, 30
- it may issue a notice (an “action notice”) to that person directing them to take, or refrain from taking, such steps as are specified in the notice in order to remedy or prevent a recurrence of the contravention.
- (2) The Secretary of State may by regulations make provision for appeal against an action notice. 35

- (3) Section 11 (civil penalties) applies to any person who fails to take all reasonable steps to comply with an action notice.

10 Redress orders

- (1) If the Commission is of the opinion that a relevant authority has subjected a person to detriment as a consequence of that person – 5
- (a) being a whistleblower; or
 - (b) being a close relative of a whistleblower.
- it may issue an order (a “redress order”) to that relevant authority directing them to take, or refrain from taking, such steps as are specified in order to provide redress to that person. 10
- (2) For the purposes of determining whether to issue a redress order, the Commission may assume that a whistleblower who has been subject to detriment was subject to that detriment for the reasons in subsection (1) unless the relevant authority can prove otherwise.
- (3) The Commission may issue a redress order whether the detriment was caused – 15
- (a) deliberately; or
 - (b) negligently.
- (4) A redress order may order financial redress but must not order financial reward for making a protected disclosure 20
- (5) The Secretary of State may by regulations make provision for appeal against an action notice.
- (6) Section 11 (civil penalties) applies to any person who fails to take all reasonable steps to comply with an action notice.

11 Civil penalties 25

- (1) Where the Commission is satisfied that by reason of any act or omission this section applies to any person, they may by notice in writing require that person to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.
- (2) In this section “the maximum amount” means – 30
- (a) £5,000 in the case of an individual; and
 - (b) £50,000 in any other case.
- (3) A penalty under this section is recoverable by the Commission.

PART 3

CRIMINAL OFFENCES

12 Offence of subjecting a whistleblower to detriment

- (1) A person, A, who subjects a person, B, to detriment as a consequence of B—
 (a) being a whistleblower; or 5
 (b) being a close relative of a whistleblower
 is guilty of an offence.
- (2) In considering whether a relevant authority or an employee or representative of a relevant authority is guilty of that offence a court must have regard to the duty under section 3(2). 10
- (3) A person guilty of an offence under subsection (1) is liable—
 (a) on summary conviction in England and Wales, to a fine;
 (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
 (c) on conviction on indictment, to imprisonment for a term not exceeding 15
 18 months or a fine, or both.
- (4) Where a court is considering for the purposes of sentencing the seriousness of an offence under this section and, in the opinion of the court, A subjected B to detriment for the reason of retaliation, the court must treat that reason as an aggravating factor (that is to say, a factor that increases the seriousness of the offence). 20

13 Offence of failing to handle a protected disclosure adequately

- (1) A person who fails to investigate a protected disclosure adequately is guilty of an offence.
- (2) In considering whether a person is guilty of that offence a court must have regard to— 25
 (a) if that person is a relevant authority or an employee or representative of a relevant authority, their duties under sections 3(4) and (5); and
 (b) relevant standards under section 6.
- (3) A person guilty of an offence under subsection (1) is liable— 30
 (a) on summary conviction in England and Wales, to a fine;
 (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
 (c) on conviction on indictment, to imprisonment for a term not exceeding 35
 18 months or a fine, or both.

PART 4

OTHER MEASURES

14 Prohibition of non-disclosure agreements and equivalent

- (1) Any agreement between a relevant authority and a person is void in so far as it purports to preclude that person from making a protected disclosure. 5
- (2) Agreements void under this section include—
 - (a) non-disclosure agreements;
 - (b) other contractual duties of confidentiality.
- (3) The Commission may use any of its powers in relation to existing or proposed agreements that are, or that the Commission suspects are, covered by this section. 10

15 Protection of whistleblowers against criminal or civil action

- (1) In a prosecution of a person for any offence prohibiting or restricting the disclosure of information it is a defence for the person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by the person to be, a protected disclosure. 15
- (2) No cause of action in civil proceedings shall lie against a person in respect of the making of a protected disclosure.

16 Repeal of the Public Interest Disclosure Act 1998

The Public Interest Disclosure Act 1998 is hereby repealed. 20

PART 5

REMAINING PROVISIONS

17 Standards: procedure

- (1) The Commission must consult with—
 - (a) the Welsh Ministers regarding any proposed standard relating to a matter within the legislative competence of Senedd Cymru; 25
 - (b) the Scottish Ministers regarding any proposed standard relating to a matter within the legislative competence of the Scottish Parliament;
 - (c) the Secretary of State regarding any proposed standard relating to any other matter. 30
- (2) Having consulted under subsection (1), the Commission must provide to—

-
- (a) the Welsh Ministers any standard relating to a matter within the legislative competence of Senedd Cymru;
 - (b) the Scottish Ministers any proposed standard relating to a matter within the legislative competence of the Scottish Parliament;
 - (c) the Secretary of State any proposed standard relating to any other matter. 5
- (3) The Welsh Ministers shall, on receiving a standard under subsection (2), lay a draft of a statutory instrument containing that standard before Senedd Cymru.
 - (4) That standard may not be made unless the draft statutory instrument laid under subsection (3) has been approved by resolution of Senedd Cymru. 10
 - (5) The Scottish Ministers shall, on receiving a standard under subsection (2), lay a draft of a Scottish statutory instrument containing that standard before the Scottish Parliament.
 - (6) That standard may not be made unless the draft statutory instrument laid under subsection (5) has been approved subject to the affirmative procedure in accordance with section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010. 15
 - (7) The Secretary of State shall, on receiving a standard under subsection (2), lay a draft of a statutory instrument containing that standard before both Houses of Parliament. 20
 - (8) That standard may not be made unless the draft statutory instrument laid under subsection (7) has been approved by resolution of each House of Parliament.
- 18 Regulations** 25
- (1) A power to make regulations under sections 5, 9 or 10 is exercisable by statutory instrument.
 - (2) Regulations under those sections –
 - (a) may make supplementary, incidental, transitional or saving provision;
 - (b) may make different provision for different purposes or areas; and 30
 - (c) may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by, each House of Parliament.
 - (3) Before laying any such draft statutory instrument the Secretary of State must consult –
 - (a) the Welsh Ministers; and 35
 - (b) the Scottish Ministers.

19 Financial provisions

There is to be paid out of money provided by Parliament –

- (a) *any expenditure incurred under or by virtue of this Act by the Secretary of State; and*
- (b) *any increase attributable to this Act in the sums payable under any other Act out of money so provided.*

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20 Extent, commencement and short title

- (1) This Act extends to England and Wales and Scotland.
- (2) This section comes into force on the day on which this Act is passed.
- (3) The rest of this Act comes into force on such day or days as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Regulations under subsection (3) may make transitional, transitory or saving provision.
- (5) This Act may be cited as the Public Interest Disclosure (Protection) Act 2020.

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Provide protections for whistleblowers; to create offences relating to the treatment of whistleblowers and the handling of whistleblowing cases; to establish an independent body to protect whistleblowers and whistleblowing, in accordance with the public interest; to make provision for that body to set, monitor and enforce standards for the management of whistleblowing cases, to provide disclosure and advice services, to direct whistleblowing investigations and to order redress of detriment suffered by whistleblowers; to repeal the Public Interest Disclosure Act 1998; and for connected purposes.

*Presented by Dr Philippa Whitford,
supported by Peter Grant, Alison Thewliss,
Mr Andrew Mitchell, Dr Julian Lewis,
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