



An Rialálaí Agraibhia Agri-Food Regulator

Guidance for making a Protected Disclosure

This document has been prepared by An Rialálaí Agraibhia (Agri-Food Regulator) to provide guidance to those who wish to make a disclosure under Section 7 of the Protected Disclosures Act 2014 on any matter relating to unfair trading practices in business-to-business relationships in the agricultural and food supply chain as set out in the Agricultural and Food Supply Chain (Unfair Trading) Regulations 2023 – S.I. No. 625 of 2023.

The Agri-Food Regulator was established under the Agricultural and Food Supply Chain Act 2023 and, under the Unfair Trading Regulations 2023, is the designated Enforcement Authority responsible for enforcing agri-food unfair trading law as required under EU Directive 2019/633.

This document should be considered in conjunction with the Protected Disclosure Policy & Procedure document of the Agri-Food Regulator which can be found on www.agrifoodregulator.ie.

- 1.** The Protected Disclosures Act 2014 (the Act) provides a statutory framework within which individuals can raise concerns regarding relevant wrongdoing that has come to their attention in their workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so.
- 2.** A protected disclosure is defined as a disclosure of relevant information which, on the reasonable belief of the worker, tends to show one or more relevant wrongdoings, which came to the attention of the worker in connection with the worker's employment, is disclosed in the manner prescribed in the Act and is in the public interest.

3. The Chief Executive Officer of the Agri-Food Regulator has been prescribed to be the recipient of disclosures of relevant wrongdoings from individuals as defined in section 3 of the Protected Disclosures Act 2014 in respect of all matters relating to the regulation, enforcement and monitoring of business-to-business agri-food supply trading in the State under the Unfair Trading Regulations 2023.

The Act only applies to workers and does not cover volunteers or the general public.

The Protected Disclosure Policy & Procedure document drawn up by the Agri-Food Regulator provides further details of and explanation of relevant terms under the Act. The document also provides details of how a protected disclosure can be made to the Regulator.

Protections for employees who make a protected disclosure

Protection of identity

The Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of their duties) must not disclose to another person any information that might identify the discloser, except where:

- i. the disclosure recipient shows that he or she took all reasonable steps to avoid so disclosing any such information,
- ii. the disclosure recipient reasonably believes that the discloser does not object to the disclosure of any such information,
- iii. the disclosure recipient reasonably believes that disclosing any such information is necessary for —
 - a) the effective investigation of the relevant wrongdoing concerned,

- b) the prevention of serious risk to the security of the State, public health, public safety or the environment,
- c) the prevention of crime or prosecution of a criminal offence, or
- d) the disclosure is otherwise necessary in the public interest or is required by law

Where action is to be taken following a disclosure, except in exceptional cases, the disclosure recipient should contact the discloser and, where possible, gain the informed consent of the discloser, prior to any action being taken that could identify them. Where it is decided that it is necessary to disclose information that may or will disclose the identity of the discloser, the discloser should be informed of this decision, except in exceptional cases.

All reasonable steps will be taken to protect the identity of the discloser, except as set out above. Workers who are concerned that their identity is not being protected should notify their employer. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

Protection from penalisation

The Act provides specific remedies for workers who are penalised for making a disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment and includes suspension, lay-off, dismissal, demotion, loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages, change in working hours, the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty), unfair treatment, coercion, intimidation, harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

Penalisation can also include a detriment suffered by an individual because that individual, or a third party, has made a disclosure. A detriment in this context includes coercion, intimidation, harassment, discrimination, disadvantage, adverse treatment in relation to employment (or prospective employment), injury, damage, loss or threat of reprisal.

If you experience penalisation, you may need to seek redress through the industrial relations machinery of the State. The Agri-Food Regulator strongly advises you to obtain expert advice in this regard.

Immunity from Civil Liability

A person who makes a protected disclosure is afforded civil immunity from damages claims and has qualified privilege in defamation law.

Criminal Defence

In any criminal charge concerning unauthorised disclosure of information, it is a defence to show that the disclosure was, or was believed to be, a protected disclosure.

Tort Action

Workers, employees and third parties have a cause of action in tort against a person who causes detriment to them because they, or another person, have made a protected disclosure. A tort action cannot be brought in conjunction with an application for unfair dismissal or penalisation under the legislation.

What happens after a protected disclosure has been made?

Following receipt of a protected disclosure by the Chief Executive Officer of the Agri-Food Regulator, an initial screening process involving an assessment is undertaken. The screening process will assess whether the information received falls within the scope of the Agri-Food Regulator's Protected Disclosure policy and whether it should be treated as a potentially protected disclosure. The assessment will consider whether the alleged wrongdoing is serious or minor, whether it is something that can be investigated and, if it can be investigated, what steps should be taken as part of such an investigation. You will be provided with feedback by the Agri-Food Regulator in relation to the matters disclosed and be advised when consideration of the disclosure is complete.

This process is underpinned by a number of core principles:

- the principles of fair procedures and natural justice will apply in all cases;

- the Agri-Food Regulator shall make all reasonable efforts to protect the identity of the discloser;
- the motivation of the discloser is irrelevant and

a disclosure made in the absence of a reasonable belief or which is frivolous, vexatious or spurious may result in disciplinary action for the discloser

Feedback

Workers who make a protected disclosure may be provided with periodic feedback as to the progress of the matter and will be advised when consideration of the matter is complete except in exceptional cases.

Such feedback shall be provided in confidence and may not include any information that could prejudice the outcome of any investigation or action arising.

Protection of Respondents

Where an allegation is made against an individual within an organisation, the Agri-Food Regulator will take all reasonable steps to ensure such person (the respondent) is afforded appropriate protections including confidentiality (insofar as is possible), fair procedures, natural justice and, where appropriate, the right to challenge the evidence against them.

Oversight

While responsibility for the oversight of this policy lies primarily with the Chief Executive Officer, its effective implementation may be reviewed or assessed in accordance with the Terms of Reference of the Agri-Food Regulator's Audit & Risk Committee.

The Chief Executive Officer will ensure central co-operation of the implementation of this policy and will report annually on the number of protected disclosures made and the action taken and will review the effectiveness of the processes in place to manage protected disclosures as necessary.