

EMPLOYMENT

The EU Whistleblowing Directive: Transposition in Ireland is imminent

The Protected Disclosures (Amendment) Bill 2022 (the **Bill**), which transposes the EU Whistleblowing Directive into Irish law, has now passed all stages of the Irish legislative process and is due to be signed into law by the President. It is expected that a commencement order will issue shortly after that.

In our briefing, the <u>EU Whistleblowing Directive</u>: <u>Blowing the whistle means added</u> <u>compliance for employers</u> we outlined in detail the main provisions of the Bill and what it will mean for employers.

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While the final text of the Bill is very similar to the initial draft, the following are some amendments of note:

Transitional measures

A new Schedule 7 will provide for transitional measures. These include the potential application of protection measures under the new regime in respect of:

- i. protected disclosures made under the old regime, but where penalisation occurs after the commencement of the new regime, and
- ii. where penalisation occurs under the old regime but proceedings are brought after commencement of the new regime.

Provision of feedback

The Bill outlines detailed procedures for reporting channels involving diligent follow-up and the provision of feedback to the reporting person within three months.

Pursuant to an amendment to the Bill, the reporting person may now request in writing the provision of ongoing feedback. This feedback must be given at intervals of three months until the procedure relating to the report concerned is closed.

External reporting channels

The requirements for a disclosure to qualify as a 'protected disclosure' when reported externally underwent some amendment during the legislative process:

- The initial draft of the Bill outlined that individuals making a disclosure to a prescribed person would only qualify for protection if they reasonably believe that the information disclosed is "true". The Bill has since been amended to revert to the position in the Protected Disclosures Act 2014 that individuals making a disclosure to a prescribed person will qualify for protection if they reasonably believe that the information is "substantially true".
- The requirement in the initial draft of the Bill that a worker reasonably believes the information is true for reporting to a relevant Minister has been removed.

■ The conditions for a public disclosure to qualify as a protected disclosure have been updated as follows:

In addition to the worker reasonably believing that the information is substantially true, the worker must:

- i. have previously made a disclosure of substantially the same information to the employer, prescribed person or relevant Minister and no appropriate action was taken within the period required, or
- ii. reasonably believe that the wrongdoing may constitute an imminent or manifest danger to the public interest, or that if they were to report to a prescribed person or the relevant Minister there is a risk of penalisation or there is a low prospect of the wrongdoing being effectively addressed.

It will no longer be required that the worker does not make the public disclosure for personal gain and that it is reasonable to make it.

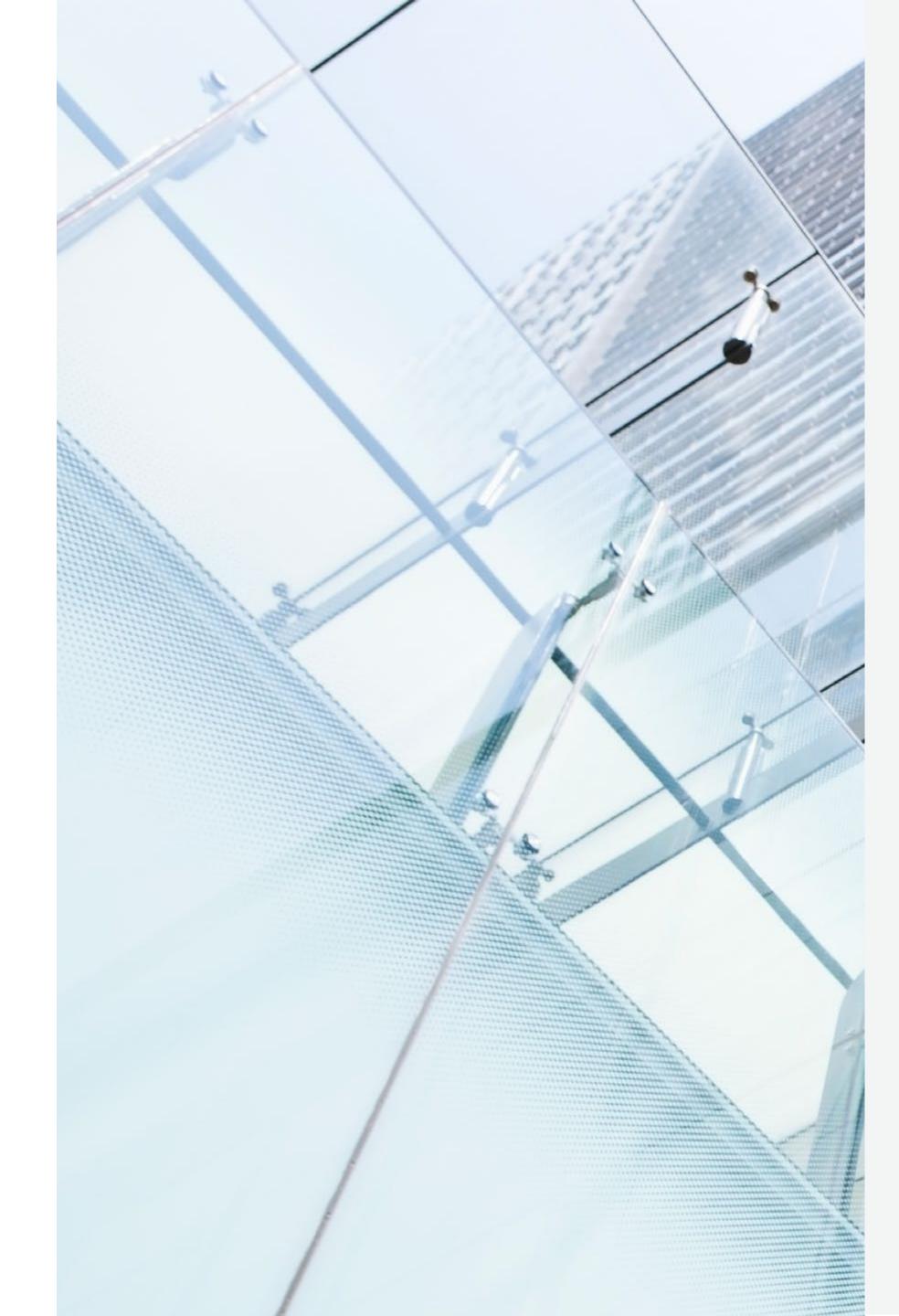


Protected disclosure or workplace grievance

As outlined in our <u>briefing</u>, the Bill attempts to exclude interpersonal grievances and complaints which exclusively relate to the worker from being a 'protected disclosure.' It is worth noting that when the legislation was being debated, the Minister of State at the Department of Public Expenditure and Reform indicated that the provisions in the legislation covering guidance will be utilised to issue comprehensive guidance on the relationship between protected disclosures and grievances. Such guidance could prove very useful to employers. Watch this space!

Next steps

Given the Irish legislation is significantly behind the December 2021 deadline, it is unlikely any time will be wasted in commencing it. The time is now for employers to ensure their policies and procedures are robust and up to date and that managerial staff are trained in order to ensure compliance with the new requirements and procedures.



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