



Number 27 of 2001

PREVENTION OF CORRUPTION (AMENDMENT) ACT 2001

REVISED

Updated to 1 October 2015

This Revised Act is an administrative consolidation of the *Prevention of Corruption (Amendment) Act 2001*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Urban Regeneration and Housing Act 2015* (33/2015), enacted 28 July 2015, and all statutory instruments up to and including *Labour Relations Commission (Dissolution Day) Order 2015* (S.I. No. 413 of 2015), made 30 September 2015, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Prevention of Corruption Acts 1889 to 2010: This Act is one of a group of Acts included in this collective citation (*Prevention of Corruption (Amendment) Act 2010*, s. 7(2)). The Acts in the group are:

- *Public Bodies Corrupt Practices Act 1889* (52 & 53 Vict., c. 69)
- *Public Bodies Corrupt Practices Act 1889* (52 & 53 Vict., c. 69)
- *Prevention of Corruption Act 1906* (6 Edw. 7., c. 34)
- *Prevention of Corruption Act 1916* (6 & 7 Geo. 5., c. 64)
- *Ethics in Public Office Act 1995* (22/1995), section 38
- *Prevention of Corruption (Amendment) Act 2001* (27/2001)
- *Proceeds of Crime (Amendment) Act 2005* (1/2005), Part 5
- *Prevention of Corruption (Amendment) Act 2010* (33/2010)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1999, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Workplace Relations Act 2015* (16/2015)
- *Protected Disclosures Act 2014* (14/2014)
- *Prevention of Corruption (Amendment) Act 2010* (33/2010)
- *National Asset Management Agency Act 2009* (34/2009)
- *Criminal Justice Act 2006* (26/2006)
- *Proceeds of Crime (Amendment) Act 2005* (1/2005)

All Acts up to and including *Urban Regeneration and Housing Act 2015* (33/2015), enacted 28 July 2015, were considered in the preparation of this revision.

Statutory instruments, orders and regulations which affect or previously affected this revision

- *Prevention of Corruption (Amendment) Act 2001 (Commencement) (No. 2) Order 2002* (S.I. No. 477 of 2002)
- *Prevention of Corruption (Amendment) Act 2001 (Commencement) Order 2002* (S.I. No. 519 of 2001)

All statutory instruments up to and including *Labour Relations Commission (Dissolution Day) Order 2015* (S.I. No. 413 of 2015), made 30 September 2015, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Amendment of section 1 of Act of 1906.
 - 2A. Seizure of suspected bribe.
 - 2B. Forfeiture of bribe.
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 3. Presumption of corruption from failure to disclose political donations.
 4. Presumption of corruption.
 5. Search Warrant.
 6. Corruption occurring partially in State.
 7. Corruption occurring outside State.
 8. Corruption in office.
 - 8A. Protection for persons (including employees) reporting offences under Prevention of Corruption Acts 1889 to 2010.
 9. Offences by bodies corporate.
 10. Short title, collective citation and construction.
- Schedule 1 Redress for ccontravention of section 8A(5)
- Schedule 2 Provisions applicable in case of communications referred to in section 8A made in confidence.

ACTS REFERRED TO

Electoral Act, 1997	1997, No. 25
European Parliament Elections Act, 1997	1997, No. 2
Local Elections (Disclosure of Donations and 1999, No. 7 Expenditure) Act, 1999	
Planning and Development Act, 2000	2000, No. 30
Prevention of Corruption Act, 1906	1906, c. 34

[No. 27.]

*Prevention of Corruption
(Amendment) Act 2001*

[2001.]

Prevention of Corruption Acts, 1889 to 1995

Public Bodies Corrupt Practices Act, 1889 1889, c. 69



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AN ACT TO GIVE EFFECT TO THE CONVENTION DRAWN UP ON THE BASIS OF ARTICLE K 3(2)(c) OF THE TREATY ON EUROPEAN UNION ON THE FIGHT AGAINST CORRUPTION INVOLVING OFFICIALS OF THE EUROPEAN COMMUNITIES OR OFFICIALS OF MEMBER STATES OF THE EUROPEAN UNION DONE AT BRUSSELS ON THE 26th DAY OF MAY, 1997, THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS DRAWN UP UNDER THE AUSPICES OF THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT AND ADOPTED AT PARIS ON THE 21st DAY OF NOVEMBER, 1997, AND THE CRIMINAL LAW CONVENTION ON CORRUPTION DRAWN UP UNDER THE AUSPICES OF THE COUNCIL OF EUROPE AND DONE AT STRASBOURG ON THE 27th DAY OF JANUARY, 1999, AND FOR THAT PURPOSE TO AMEND CERTAIN ENACTMENTS AND TO PROVIDE FOR RELATED MATTERS. [9th July, 2001]

BE IT ENACTED BY THE OIREACTHAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Application of collectively cited *Prevention of Corruption Acts 1889 to 2001* confirmed (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 16, S.I. No. 545 of 2009.

Prevention of corruption.

16.— (1) To avoid doubt, the provisions of the Prevention of Corruption Acts 1889 to 2001 apply to—

- (a) every officer of NAMA,
- (b) the Chief Executive Officer,
- (c) the other members of the Board, and
- (d) every director of a NAMA group entity.

(2) Where in any proceedings against a person who performs functions for or on or behalf of NAMA, or who performs functions connected to the valuation of eligible bank assets, for an offence under the Public Bodies Corrupt Practices Act 1889 or the Prevention of Corruption Act 1906 it is shown that—

- (a) any gift, consideration or advantage has been given to or received by the person, and
- (b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given was—

- (i) a person who is a debtor in relation to an eligible bank asset, or
- (ii) an associated debtor of such a person,

the gift or consideration or advantage shall be taken, unless the contrary is proved, to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of those functions.

- C2** Application of collectively cited *Prevention of Corruption Acts* confirmed (1.01.2003 and 21.05.2004) by *Local Government Act 2001* (37/2001), s. 170, S.I. No. 218 of 2002 and S.I. No. 217 of 2004.

Prohibition of favours, rewards, etc.

170.—(1) An employee or a member of a local authority or of a committee of a local authority shall not seek, exact or accept from any person, other than from the local authority concerned, any remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment or office, and a code of conduct under section 169 may include guidance for the purposes of this subsection.

(2) Subsection (1) shall not be read so as to exclude the persons to whom that subsection relates from the application of the Prevention of Corruption Acts, 1889 to 1995, and any Act which is to be construed together as one with those Acts.

Interpretation. **1.**—(1) In this Act “the Act of 1906” means the Prevention of Corruption Act, 1906.

(2) References in this Act to an act include references to an omission and references to the doing of an act include references to the making of an omission.

(3) References in this Act to any enactment shall be construed as references to that enactment as amended, adapted or extended by any subsequent enactment including this Act.

Amendment of section 1 of Act of 1906.

2.—The Act of 1906 is hereby amended by the substitution of the following section for section 1:

“1.—(1) An agent or any other person who—

(a) corruptly accepts or obtains, or

(b) corruptly agrees to accept or attempts to obtain,

for himself or herself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(2) A person who—

(a) corruptly gives or agrees to give, or

(b) corruptly offers,

any gift or consideration to an agent or any other person, whether for the benefit of that agent, person or another person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business shall be guilty of an offence.

(3) A person who knowingly gives to any agent, or an agent who knowingly uses with intent to deceive his or her principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable—

(a) on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 10 years or to both.

(5) In this Act—

‘agent’ includes—

(a) any person employed by or acting for another,

(b) (i) an office holder or director (within the meaning, in each case, of the Public Bodies Corrupt Practices Act, 1889, as amended) of, and a person occupying a position of employment in, a public body (within the meaning aforesaid) and a special adviser (within the meaning aforesaid),

(ii) a member of Dáil Éireann or Seanad Éireann,

(iii) a person who is a member of the European Parliament by virtue of the European Parliament Elections Act, 1997,

(iv) an Attorney General (who is not a member of Dáil Éireann or Seanad Éireann),

(v) the Comptroller and Auditor General,

(vi) the Director of Public Prosecutions,

(vii) a judge of a court in the State,

(viii) any other person employed by or acting on behalf of the public administration of the State,

and

(c) (i) a member of the government of any other state,

(ii) a member of a parliament, regional or national, of any other state,

(iii) a member of the European Parliament (other than a person who is a member by virtue of the European Parliament Elections Act, 1997),

(iv) a member of the Court of Auditors of the European Communities,

(v) a member of the Commission of the European Communities,

(vi) a public prosecutor in any other state,

(vii) a judge of a court in any other state,

(viii) a judge of any court established under an international agreement to which the State is a party,

(ix) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement to which the State is a party, and

(x) any other person employed by or acting on behalf of the public administration of any other state;

‘consideration’ includes valuable consideration of any kind;

‘principal’ includes an employer.”.

F1[Seizure of suspected bribe.

2A.—(1) A member of the Garda Síochána may seize any gift or consideration which the member suspects to be a gift or consideration within the meaning of section 1 of the Prevention of Corruption Act 1906, as amended by section 2 of this Act.

(2) The seized property may not be detained for more than 48 hours unless its detention for a further period is authorised by order of a judge of the Circuit Court.

(3) Such an order—

(a) shall not be made unless the judge is satisfied—

(i) that there are reasonable grounds for suspecting that the seized property is a gift or consideration within the meaning of the said section 1,

(ii) that either its origin or derivation is being further investigated or consideration is being given to instituting proceedings, whether in the State or elsewhere, against a person for an offence with which the gift or consideration is connected, and

(iii) that it is accordingly necessary that the property be detained for a further period,

and

(b) shall authorise the detention of the seized property for a further specified period or periods, not exceeding 3 months in any case or 2 years in aggregate.

(4) An application for an order under subsection (3) of this section may be made by a member of the Garda Síochána.

(5) Property detained under this section shall continue to be so detained until the final determination of—

(a) any proceedings, whether in the State or elsewhere, against any person for an offence with which the property is connected, or

(b) any application under section 2B for its forfeiture,

whichever later occurs.

(6) Subject to subsection (5), a judge of the Circuit Court may cancel an order under subsection (3) of this section if satisfied, on application by the person from whom the property was seized or any other person, that its further detention is no longer justified.]

Annotations

Amendments:

- F1** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 23, commenced on enactment.

F2[Forfeiture of bribe.

2B.—(1) A judge of the Circuit Court may order any gift or consideration which is detained under section 2A of this Act to be forfeited if satisfied, on application made by or on behalf of the Director of Public Prosecutions, that it is a gift or consideration referred to in section 1 of the Prevention of Corruption Act 1906, as amended by section 2 of this Act.

(2) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the gift or consideration in question is connected.

(3) The standard of proof in proceedings under this section is that applicable in civil proceedings.]

Annotations

Amendments:

- F2** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 23, commenced on enactment.

F3 [Application of sections 40, 41, 42 and 45 of Act of 1994 to certain property.

2C.—Sections 40 (appeal against forfeiture order), 41 (interest on cash detained), 42 (procedure) and 45 (disposal of forfeited cash) of the Act of 1994 shall apply in relation to cash and, as appropriate, to any other gift or consideration detained under section 2A, or forfeited under section 2B, of this Act as they apply in relation to cash detained or forfeited under section 38 or 39 of that Act.]

Annotations

Amendments:

- F3** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 23, commenced on enactment.

Presumption of corruption from failure to disclose political donations.

3.—(1) Where in any proceedings against a person to whom this section applies for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

- (a) the person received a donation exceeding in value the relevant amount specified in the Electoral Act, 1997, or the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, as appropriate,
- (b) the person failed to disclose the donation in accordance with that Act to the Public Offices Commission or the local authority concerned as appropriate, and
- (c) the donor had an interest in the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business,

the donation shall be deemed to have been given and received corruptly as an inducement to or reward for the person doing any act or making any omission in relation to his or her office or position or his or her principal's affairs or business unless the contrary is proved.

(2) This section applies to the following:

- (a) a person required by section 24 of the Electoral Act, 1997, to furnish a donation statement to the Public Offices Commission,
- (b) a person required by section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, to furnish to the local authority concerned a statement of donations under subsection (1) of that section.

(3) In this section—

“donation”

- (a) in relation to persons referred to in section 24 of the Electoral Act, 1997, has the meaning assigned to it by section 22 of that Act,

(b) in relation to persons referred to in section 13 of the Local Elections (Disclosure of Donations and Expenditure) Act, 1999, has the meaning assigned to it by section 2 of that Act;

“donor” means the person who makes a donation or on whose behalf a donation is made.

Presumption of corruption.

4.—(1) Where in any proceedings against a person referred to in subsection (5)(b) of section 1 (inserted by *section 2* of this Act) of the Act of 1906 for an offence under the Public Bodies Corrupt Practices Act, 1889, as amended, or the Act of 1906, as amended, it is proved that—

(a) any gift, consideration or advantage has been given to or received by a person,

(b) the person who gave the gift, consideration or advantage or on whose behalf the gift, consideration or advantage was given had an interest in the discharge by the person of any of the functions specified in this section,

the gift or consideration or advantage shall be deemed to have been given and received corruptly as an inducement to or reward for the person performing or omitting to perform any of the functions aforesaid unless the contrary is proved.

(2) This section applies to the following functions:

(a) the granting, refusal, withdrawal or revocation by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State by or under any statute of any licence, permit, certificate, authorisation or similar permission,

(b) the making of any decision relating to the acquisition or sale of property by a Minister or an officer of a Minister or by any other person employed by or acting on behalf of the public administration of the State,

(c) any functions of a Minister or an officer of a Minister or of any other person employed by, acting on behalf of, or a member of a body that is part of the public administration of the State under the Planning and Development Act, 2000.

(3) In this section—

“functions” includes powers and duties and references to the performance of functions includes as respects powers and duties references to the exercise of functions and the carrying out of duties;

“Minister” means a person who is a Minister of the Government or a Minister of State.

Search Warrant.

5.—F4[(1) If a judge of the District Court is satisfied by information on oath of a member of the Garda Síochána, or if a member of the Garda Síochána not below the rank of superintendent is satisfied, that there are reasonable grounds for suspecting that evidence of or relating to the commission of an offence or suspected offence under the Prevention of Corruption Acts 1889 to 2001 punishable by imprisonment for a term of 5 years or by a more severe penalty (‘an offence’) is to be found in any place, he or she may issue a warrant for the search of that place and any persons found at that place.]

(2) A member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied—

(a) that the search warrant is necessary for the proper investigation of an offence, and

(b) that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for the issue of the warrant.

(3) A warrant under this section shall be expressed, and shall operate, to authorise a named member of the Garda Síochána, accompanied by such other members or persons as the member thinks necessary, to enter, within one month of the date of issue of the warrant, if necessary by the use of reasonable force, the place named in the warrant, to search it and any persons found at that place and to seize and to retain anything found at that place, or anything found in the possession of a person present at that place at the time of the search, which the said member reasonably believes to be evidence of or relating to the commission of an offence or suspected offence.

(4) A search warrant issued by a member of the Garda Síochána under this section shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

(5) A member of the Garda Síochána acting under the authority of a warrant under this section may—

(a) require any person present at the place where the search is being carried out to give to the member his or her name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that member in the carrying out of his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the member has reasonable cause for believing is false or misleading.

(6) A person who obstructs or attempts to obstruct a member acting under the authority of a warrant under this section, who fails to comply with a requirement under *paragraph (a)* of *subsection (5)*, or who gives a false or misleading name or address to a member shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,362.69 or to imprisonment for a period not exceeding 12 months or to both.

(7) The power to issue a warrant under this section is without prejudice to any other power conferred by statute for the issue of a warrant for the search of any place or person.

Annotations

Amendments:

- F4** Substituted (1.08.2006) by *Criminal Justice Act 2006* (26/2006), s. 191(1), S.I. No. 390 of 2006, subject to transitional provisions in subs. (2).

Corruption occurring partially in State.

6.—A person may be tried in the State for an offence under the Public Bodies Corrupt Practices Act, 1889, or the Act of 1906, if any of the acts alleged to constitute the offence was committed in the State notwithstanding that other acts constituting the offence were committed outside the State.

Corruption occurring outside State.

7.—(1) Subject to *subsection (2)* of this section, where a person F5[**whether or not the person is an agent**)] does outside the State an act that, if done in the State, would constitute an offence under F6[**the relevant section**], he or she shall be guilty

of an offence and he or she shall be liable on conviction to the penalty to which he or she would have been liable if he or she had done the act in the State.

F6[(2) Subsection (1) shall apply only where the person concerned is—

- (a) an Irish citizen,
- (b) an individual who is ordinarily resident in the State,
- (c) a company registered under the Companies Acts,
- (d) any other body corporate established under a law of the State, or
- (e) a relevant agent in any case where the relevant agent does not fall within any of paragraphs (a) to (d).

(3) In this section—

‘agent’ has the meaning assigned to it by subsection (5) of the relevant section;

‘ordinarily resident in the State’, in relation to an individual, means the individual has had his or her principal residence in the State for the period of 12 months immediately preceding the alleged commission of the offence concerned under subsection (1);

‘relevant agent’ means a person who falls within paragraph (b) of the definition of ‘agent’ in subsection (5) of the relevant section;

‘relevant section’ means section 1 (inserted by section 2 of this Act and as amended by section 2 of the *Prevention of Corruption (Amendment) Act 2010*) of the Act of 1906.]

Annotations

Amendments:

- F5 Inserted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), s. 3(a)(i), commenced on enactment.
- F6 Substituted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), s. 3(a)(ii) and (b), commenced on enactment.

Editorial Notes:

- E1 Offence under section included in definition of “relevant offence” for purposes of *Criminal Justice Act 2011* (22/2011) (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 3 and sch. 1, S.I. No. 411 of 2011.

Corruption in
office.

8.—(1) A public official who does any act in relation to his or her office or position for the purpose of corruptly obtaining a gift, consideration or advantage for himself, herself or any other person, shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £2,362.69 or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 10 years or to both.

(2) In this section—

“consideration” includes valuable consideration of any kind;

“public official” means a person referred to in subsection (5)(b) of section 1 (inserted by section 2 of this Act) of the Act of 1906.

Annotations

Editorial Notes:

- E2** Offence under section included in definition of “relevant offence” for purposes of *Criminal Justice Act 2011* (22/2011) (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 3 and sch. 1, S.I. No. 411 of 2011.

F7[Protection for persons (including employees) reporting offences under *Prevention of Corruption Acts 1889 to 2010*.

8A.— (1) A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to an appropriate person of his or her opinion that an offence under the *Prevention of Corruption Acts 1889 to 2010* may have been or may be being committed unless—

(a) in communicating his or her opinion to that appropriate person did so—

(i) knowing it to be false, misleading, frivolous or vexatious, or

(ii) reckless as to whether it was false, misleading, frivolous or vexatious,

or

(b) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading.

(2) The reference in subsection (1) to liability in damages shall be construed as including a reference to liability to any other form of relief.

F8[(2A) Subsection (1) does not apply to a communication, or furnishing of information, that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(3) A person who makes a communication under subsection (1), which the person knows to be false, that a person may have committed or may be committing an offence under the *Prevention of Corruption Acts 1889 to 2010* shall be guilty of an offence.

(4) Subsection (1) is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the commencement of this section, in respect of the communication by a person to another (whether that other person is an appropriate person or not) of an opinion of the kind referred to in subsection (1).

(5) An employer shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for—

(a) having formed an opinion of the kind referred to in subsection (1) and communicated it, whether in writing or otherwise, to an appropriate person unless the employee—

(i) in communicating his or her opinion to that appropriate person did so—

(I) knowing it to be false, misleading, frivolous or vexatious, or

(II) reckless as to whether it was false, misleading, frivolous or vexatious,

or

(ii) in connection with the communication of his or her opinion to that appropriate person, furnished information that he or she knew to be false or misleading,

or

(b) giving notice of his or her intention to do the thing referred to in paragraph (a).

F8[(5A) Subsection (5) does not apply to a communication, or furnishing of information, that is a protected disclosure within the meaning of the Protected Disclosures Act 2014.]

(6) Schedule 1 shall have effect in relation to an alleged contravention of subsection (5).

(7) An employer who contravenes subsection (5) shall be guilty of an offence.

(8) A person guilty of an offence under subsection (3) or (7) shall be liable—

(a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years or both.

(9) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence referred to in subsection (8) as if, in lieu of the penalties specified in subsection (3)(a) of that section, there were specified therein the penalties provided for in subsection (8)(a) and the reference in subsection (2)(a) of that section to the penalties provided for by subsection (3) of that section shall be construed and have effect accordingly.

(10) Any person who, upon examination on oath or affirmation authorised under paragraph 3(1) of Schedule 1, wilfully makes any statement which is material for that purpose and which the person knows to be false or does not believe to be true shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.

(11) A person to whom a notice under paragraph 3(2) of Schedule 1 has been given and who refuses or wilfully neglects to attend in accordance with the notice or who, having so attended, refuses to give evidence or refuses or wilfully fails to produce any document to which the notice relates shall be guilty of an offence and liable on summary conviction to a fine not exceeding €5,000.

(12) A document purporting to be signed by the chairperson or a deputy chairperson of the Labour Court stating that—

(a) a person named in the document was, by a notice under paragraph 3(2) of Schedule 1, required to attend before the Labour Court on a day and at a time and place specified in the document, to give evidence or produce a document, or both,

(b) a sitting of the Labour Court was held on that day and at that time and place, and

(c) the person did not attend before the Labour Court in pursuance of the notice or, as the case may be, having so attended, refused to give evidence or refused or wilfully failed to produce the document,

shall, in a prosecution of the person under subsection (11), be evidence of the matters so stated without further proof unless the contrary is shown.

(13) For the purposes of this section, a reference to ‘dismissal’ includes—

(a) a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, and

(b) a dismissal wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under section 9(3) of the Protection of Employees (Fixed-Term Work) Act 2003.

(14) Schedule 2 shall have effect for the purposes of a communication referred to in this section made to an appropriate person who is a confidential recipient.

(15) Paragraphs (a), (c), (d), (e) and (f) of the definition of 'penalisation' in subsection (16) shall not be construed in a manner which prevents an employer from—

(a) ensuring that the business concerned is carried on in an efficient manner, or

(b) taking any action required for economic, technical or organisational reasons.

(16) In this section—

'appropriate person', in relation to a communication referred to in this section made by a person, means a communication to—

(a) in any case, a member of the Garda Síochána,

(b) in any case where the opinion concerned of the kind referred to in subsection (1) was formed in the course of the person's employment—

(i) the person's employer, or

(ii) a person nominated by such employer as the person to whom a communication of that kind may be made,

(c) without prejudice to the generality of paragraphs (a) and (b), in any case where the person is in a state other than the State—

(i) a diplomatic or consular officer of the State who is in that state, or

(ii) a member of a law enforcement agency of that state,

or

(d) in any case where the person wishes to make the communication in confidence, to a confidential recipient;

'confidential recipient' has the meaning assigned to it by paragraph 1 of Schedule 2;

'contract of employment' means a contract of employment or of service or of apprenticeship, whether the contract is express or implied and, if express, whether it is oral or in writing;

'employee' means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer;

'employer', in relation to an employee, means the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, and includes—

(a) a person (other than an employee of that person) under whose control and direction an employee works, and

(b) where appropriate, the successor of the employer or an associated employer of the employer;

'penalisation' means any act or omission by an employer, or by a person acting on behalf of an employer, that affects an employee to his or her detriment with respect

to any term or condition of his or her employment, and, without prejudice to the generality of the foregoing, includes—

- (a) suspension, lay-off or dismissal,
- (b) the threat of suspension, lay-off or dismissal,
- (c) demotion or loss of opportunity for promotion,
- (d) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (e) the imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty),
- (f) unfair treatment, including selection for redundancy,
- (g) coercion, intimidation or harassment,
- (h) discrimination, disadvantage or adverse treatment,
- (i) injury, damage or loss, and
- (j) threats of reprisal.]

Annotations

Amendments:

- F7** Inserted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), s. 4, commenced on enactment.
- F8** Inserted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 24(1) and sch. 4 part 1 item 2, S.I. No. 327 of 2014.

Editorial Notes:

- E3** Redress and appeal procedures for disputes under subs. (5) provided (1.10.2015) by *Workplace Relations Act 2015* (16/2015), ss. 41, 44 and sch. 5 part 1 item 9, sch. 6 part 1 item 15, sch. 6 part 2 item 15, S.I. No. 410 of 2015.
- E4** Subs. (5) included in definitions of “employment enactment” and “relevant enactment” (1.08.2015) by *Workplace Relations Act 2015* (16/2015), s. 2 and sch. 1 part 2 item 1, S.I. No. 338 of 2015, with the following effects:
- Authorised officers or inspectors under employment enactments deemed to be appointed under *Workplace Relations Act 2015* (16/2015), s. 26(2) and subject to termination under s. 26(4).
 - Powers of inspectors for purposes of relevant enactments defined in *Workplace Relations Act 2015* (16/2015), s. 27.
 - Workplace Relations Commission, an inspector or an adjudication officer authorised to disclose employer’s registered number or employee’s PPSN to enable Labour Court to perform functions under relevant enactments by *Workplace Relations Act 2015* (16/2015) s. 31(5).
 - Power of Workplace Relations Commission and official body to disclose information to each other concerning the commission of offence under relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 32.
 - Power of Workplace Relations Commission and contracting authority to disclose information to each other concerning the commission of offence under employment enactment/ relevant enactment provided by *Workplace Relations Act 2015* (16/2015), s. 33.
 - Powers of Minister to prosecute under relevant enactments transferred to Workplace Relations Commission and references construed by *Workplace Relations Act 2015* (16/2015), s. 37.
 - Functions of EAT to hear claims under employment enactments transferred to Workplace Relations Commission and references to EAT construed by *Workplace Relations Act 2015* (16/2015) s. 66(1), (2), not commenced as of date of revision.

F9 [Offences —
general.

9.— (1) Where an offence under the relevant Acts has been committed by a body corporate and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any neglect on the part of, a person who was either—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in any such capacity,

that person shall also be guilty of an offence and liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in respect of the acts or defaults of a member in connection with the member's functions of management as if the member were a director or manager of the body corporate.

(3) Subsections (1) and (2) shall, with any necessary modifications, apply in respect of offences under the relevant Acts committed by an unincorporated body.

(4) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under the relevant Acts to which that provision applies may be instituted—

(a) within 12 months from the date on which the offence was committed, or

(b) within 6 months from the date on which evidence sufficient, in the opinion of the person instituting the proceedings, to justify proceedings comes to that person's knowledge,

whichever is the later, provided that no such proceedings shall be commenced later than 2 years from the date on which the offence concerned was committed.

(5) For the purposes of subsection (4), a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence referred to in that subsection came to his or her knowledge shall be evidence of that date and, in any legal proceedings, a document purporting to be a certificate under this subsection and to be so signed shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(6) In this section, 'relevant Acts' means the *Prevention of Corruption Acts 1889 to 2010*.]

Annotations

Amendments:

- F9 Substituted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), s. 5, commenced on enactment.

Short title,
collective citation
and construction.

10.—(1) This Act may be cited as the Prevention of Corruption (Amendment) Act, 2001.

(2) The Prevention of Corruption Acts, 1889 to 1995, and this Act may be cited together as the Prevention of Corruption Acts, 1889 to 2001, and shall be construed together as one.

(3) This Act shall come into operation on such day or days as, by order or orders made by the Minister for Justice, Equality and Law Reform under this section, may be fixed therefor either generally or with reference to any particular purpose or

provision, and different days may be so fixed for different purposes and different provisions.

Annotations**Editorial Notes:**

E5 Power pursuant to section exercised (4.11.2002) by *Prevention of Corruption (Amendment) Act 2001 (Commencement) (No. 2) Order 2002* (S.I. No. 477 of 2002).

2. The 4th day of November 2002 is fixed as the day on which section 4(2)(c) of the Prevention of Corruption (Amendment) Act 2001 (No. 27 of 2001) shall come into operation.

E6 Power pursuant to section exercised (26.11.2001) by *Prevention of Corruption (Amendment) Act 2001 (Commencement) Order 2001* (S.I. No. 519 of 2001).

2. The 26th day of November, 2001, is fixed as the day on which the Prevention of Corruption (Amendment) Act, 2001 (No. 27 of 2001) (other than section 4(2)(c)) shall come into operation.

F10[SCHEDULE 1

REDRESS FOR CONTRAVENTION OF SECTION 8A(5)

Complaints to rights commissioner.

1. F11[In proceedings under Part 4 of the Workplace Relations Act 2015 in respect of a complaint of a contravention of section 8A(5), it shall not be necessary for the employee to show that he or she has at least one year's continuous service with the employer concerned.]

(2) F12[...]

(3) F11[A decision of an adjudication officer under section 41 of the Workplace Relations Act 2015 in relation to a complaint of a contravention of section 8A(5) shall do one or more of the following, namely—

(a) declare that the complaint was or, as the case may be, was not well founded,

(b) require the employer to take a specified course of action, which may include, in a case where the penalisation constitutes a dismissal within the meaning of section 8A(13), reinstatement or reengagement, or

(c) require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all of the circumstances, but not exceeding 104 weeks' remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act 1977.]

(4) F12[...]

2. F11[A decision of the Labour Court under section 44 of the Workplace Relations Act 2015, on appeal from a decision of an adjudication officer referred to in paragraph 1(3), shall affirm, vary or set aside the decision of the adjudication officer.]

Paragraphs 1 and 2: supplemental provisions.

3. (1) F12[...]

(2) F12[...]

(3) F12[...]

(4) F12[...]

(5) F12[...]

(6) F12[...]

F11[(7) In proceedings under Part 4 of the Workplace Relations Act 2015 in relation to a complaint that section 8A(5) has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

(8) (a) If penalisation of an employee, in contravention of section 8A(5), constitutes a dismissal of the employee, as referred to in paragraph (a) of the definition of 'penalisation' in section 8A(16), the employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with his or her consent) may institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal and, if the employee or his or her parent or guardian, as the case may be, does so, F11[a complaint in respect of the contravention shall not be referable to an adjudication officer

under section 41 of the Workplace Relations Act 2015 or a mediation officer under section 39 of that Act].

(b) If an employee (or, in the case of an employee who has not reached the age of 18 years, the employee's parent or guardian with his or her consent) presents F11[a complaint to the Director General of the Workplace Relations Commission under section 41 of the Workplace Relations Act 2015 in respect of a contravention] referred to in clause (a), the employee or his or her parent or guardian, as the case may be, may not institute proceedings in respect of that dismissal under the Unfair Dismissals Acts 1977 to 2007 or to recover damages at common law for wrongful dismissal.

Enforcement of determinations of Labour Court.

4.F12[...]

Interpretation.

5.F12[...]]

Annotations

Amendments:

- F10** Inserted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), s. 6, commenced on enactment.
- F11** Substituted (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 52(1) and sch. 7 part 1 ref. 15, subject to transitional provisions in subs. (3).
- F12** Repealed (1.10.2015) by *Workplace Relations Act 2015* (16/2015), s. 8(1) and sch. 2 part 1 ref. 14, S.I. No. 410 of 2015, subject to transitional provisions in subs. (2).

F13[SCHEDULE 2

PROVISIONS APPLICABLE IN CASE OF COMMUNICATIONS REFERRED TO IN SECTION 8A MADE IN CONFIDENCE

Definitions.

1. In this Schedule—

'alleged relevant offence', in relation to a confidential communication, means the offence under the *Prevention of Corruption Acts 1889 to 2010* alleged in the communication;

'appropriate person' has the meaning assigned to it by section 8A(16);

'civilian' means a member of the civilian staff of the Garda Síochána;

'Commissioner' means—

(a) the Commissioner of the Garda Síochána, or

(b) a deputy commissioner, or an assistant commissioner, authorised under section 32 of the Garda Síochána Act 2005 to perform the functions of the Commissioner;

‘confidential communication’ means a communication referred to in section 8A made to an appropriate person who is a confidential recipient;

‘confidential communicator’, in relation to a confidential communication, means the person who made the confidential communication;

‘confidential recipient’ means a person appointed under paragraph 2 to receive confidential communications;

‘member’ means—

(a) a member of the Garda Síochána, or

(b) a member of the Police Service of Northern Ireland appointed to a rank in the Garda Síochána under section 52 or 53 of the Garda Síochána Act 2005.

Appointment of confidential recipients.

2. The Commissioner may appoint a member or civilian, or members or civilians, as a confidential recipient or recipients to receive confidential communications.

Confidential communication.

3.(1) Where a confidential communication has been made to a confidential recipient, the confidential communicator shall disclose to the recipient any document, record or information in his or her possession or control which relates to the alleged relevant offence.

(2) Information disclosed under subparagraph (1) shall be in such form as the confidential recipient may require.

(3) A confidential communication may not be made anonymously.

Transmission of confidential communication.

4. Where a confidential communication has been made to a confidential recipient, the recipient shall, as soon as is practicable, transmit the communication to the Commissioner.

Commissioner, etc., must take steps to ensure that identity of confidential communicator is not disclosed.

5. Where a confidential communication has been transmitted to the Commissioner pursuant to paragraph 4, the Commissioner, and any person acting on his or her behalf, in examining the communication or investigating the alleged relevant offence, shall take all practicable steps to ensure that the identity of the confidential communicator is not disclosed.

Protection of confidential communicator’s identity.

6. (1) Where a confidential communication has been made to a confidential recipient, the recipient may disclose the identity of the confidential communicator to the Commissioner only if each one of the following provisions is complied with:

(a) the Commissioner—

(i) must be satisfied that knowledge of the identity of the communicator is necessary for the proper examination of the communication or the investigation of the alleged relevant offence;

(ii) must inform the recipient of his or her reasons for being so satisfied;

- (b) the recipient must be satisfied that the Commissioner, before informing the recipient under clause (a)(ii), has taken all practicable steps to advance the examination of the communication or the investigation of the alleged relevant offence;
- (c) the recipient must have informed the communicator of the situation and considered the communicator's views regarding the disclosure of his or her identity; and
- (d) the recipient must further be satisfied that, having regard to all the circumstances, the disclosure is necessary for the proper examination of the communication or the investigation of the alleged relevant offence.

(2) Where a confidential communication has been transmitted to the Commissioner pursuant to paragraph 4, the identity of the confidential communicator may be disclosed by the Commissioner to—

- (a) a member,
- (b) a civilian, or
- (c) the Director of Public Prosecutions,

only where the Commissioner is satisfied that the disclosure is necessary for the proper examination of the communication or the investigation or prosecution of the alleged relevant offence.

(3) Subject to subparagraph (4), any member or civilian to whom the identity of a confidential communicator has been disclosed under subparagraph (2) may not disclose the identity to any other person without the authorisation in writing of the Commissioner.

(4) The Commissioner may give an authorisation referred to in subparagraph (3) only where he or she is satisfied that it is necessary for the proper examination of the confidential communication or the investigation or prosecution of the alleged relevant offence.

(5) Unless otherwise authorised under this paragraph, a confidential recipient, a member, or a civilian, to whom the identity of a confidential communicator has been disclosed may disclose the identity only with consent in writing of the confidential communicator or under an order of a court.]

Annotations

Amendments:

- F13** Inserted (15.12.2010) by *Prevention of Corruption (Amendment) Act 2010* (33/2010), s. 6, commenced on enactment.