



Protected Disclosures

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IPS Policy for Protected Disclosures

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1. AIM OF THIS POLICY

- 1.1 The Irish Prison Service's Policy and Procedures for its workers to make protected disclosures, as defined by the Protected Disclosures Act 2014 (the "**Act**"), are set out below.
- 1.2 The Irish Prison Service values a culture of openness, honesty and accountability and sets itself high standards of professional and ethical conduct, as set out in the Civil Service Code of Standards and Behaviour. However, it recognises that all organisations face risks associated with potential wrongdoing. Everyone has a duty to be vigilant, to identify and to report potential wrongdoing.
- 1.3 The Irish Prison Service is committed to maintaining the highest possible standards for workers and prisoners, to providing workers with a healthy and safe working environment and to complying with its legal obligations. The Policy and Procedures seek to promote a culture of openness and accountability in which protected disclosures, as defined in paragraph 5.1, can be made by workers without fear of penalisation.
- 1.4 As part of its commitment to protecting workers who make protected disclosures, the Irish Prison Service has signed and complies with the Integrity at Work Pledge to ensure that workers reporting wrongdoings will not face penalisation and that appropriate action will be taken in response to protected disclosures. A copy of the Integrity at Work Pledge is attached at **Appendix 1**.

2. PURPOSE OF THE POLICY AND PROCEDURES

- 2.1 The Policy and Procedures are designed to:
 - (a) support the Irish Prison Service's values;
 - (b) ensure employees can raise concerns about relevant wrongdoing which come to their attention in connection with their employment, without fear of penalisation; and
 - (c) provide a transparent and confidential process for dealing with concerns.
- 2.2 The Policy and Procedures set out the Irish Prison Service's commitment to listening to these concerns and protecting those who raise them.
- 2.3 The principal objectives of the Policy and Procedures are to:
 - (a) encourage workers (as defined in paragraph 4.1) to make protected disclosures internally and at the earliest opportunity; and
 - (b) provide protection where protected disclosures are made.

- 2.4 The Policy and Procedures are designed to ensure that all protected disclosures will be the subject of an appropriate investigation followed by appropriate action based on the investigation findings. Any investigation under the Procedures will be undertaken in accordance with the specified timeframes and any resulting action will be undertaken as soon as possible in the circumstances.
- 2.5 The Procedures set out the mechanism for workers (as defined in paragraph 4.1) to make protected disclosures, as defined in paragraph 5, internally in the confidence that:
- (a) their identity will be protected by the recipient and any person to whom the protected disclosure is referred, in accordance with the Act;
 - (b) their disclosure will be investigated appropriately;
 - (c) they will not be penalised as a consequence of making a protected disclosure; and
 - (d) they will be entitled to the protections set out in the Act.

3. ROLES AND RESPONSIBILITIES

- 3.1 Overall responsibility for the Policy and Procedures rests with the Director General of the Irish Prison Service. Day-to-day responsibility for the Policy and Procedures is delegated to the Director of Corporate Services or her/his nominee and day-to-day responsibility for the administration of the Policy and Procedures is delegated to the Protected Disclosures Manager or her/his nominee.
- 3.2 The Protected Disclosures Assessor is an independent, external party appointed by the Irish Prison Service to conduct an assessment under paragraph 17.4 of the Procedures.
- 3.3 The External Investigator is an independent external investigator appointed by the Protected Disclosures Manager to conduct an investigation of a disclosure made under the Policy and Procedures/a complaint of penalisation or a review under paragraph 20.1.1, 20.1.3 or 20.1.4 of the Procedures.

4. SCOPE OF THIS POLICY – To whom do the Policy and Procedures apply

- 4.1 The Policy and Procedures apply to a “worker”, as defined in the Act. A “worker”, for these purposes, is an individual who is or was:
 - 4.1.1 an employee of the Irish Prison Service;
 - 4.1.2 an independent contractor to the Irish Prison Service, whether or not the work/services were provided personally by the individual to the Irish Prison Service, or, otherwise;
 - 4.1.3 an agency worker in the Irish Prison Service; or
 - 4.1.4 provided with work experience under a training course or programme or with training for employment otherwise than: (i) under an employment contract, or, (ii) by an educational establishment on a course provided by that establishment.
- 4.2 The Act and its protections do not apply to volunteers i.e. individuals who provide services to the Irish Prison Service on a non-remunerated basis. However, the Irish Prison Service recognises that volunteers may disclose information to it concerning perceived wrongdoing, which comes to such individuals’ attention in connection with their volunteering with the Irish Prison Service. In the event that a volunteer makes a disclosure of potential wrongdoing to the Irish Prison Service in these circumstances, the provisions of paragraph 2.5 (a) to 2.5 (c) shall apply.

5. WHAT IS A PROTECTED DISCLOSURE?

- 5.1 For the purposes of the Act and the Policy and Procedures, a protected disclosure is a disclosure **of relevant information** which, in **the reasonable belief of the worker**, tends to show one or **more relevant wrongdoings**; and which came to the **attention of the worker in connection with the worker's employment**; and is disclosed in the manner set out in the Act.
- 5.2 It is immaterial whether the relevant wrongdoing occurred, occurs or would occur in Ireland or outside Ireland. It is also immaterial whether the law applying to the relevant wrongdoing is Irish law or the law of any other country.
- 5.3 **What is relevant information?**
- 5.3.1 In order for a disclosure to be protected under the Act and covered by the Policy and Procedures, it is essential that it conveys relevant information which in the worker's reasonable belief tends to show a relevant wrongdoing i.e. material about someone or something, as opposed to simply conveying a generalised allegation, not founded on any information.
- 5.3.2 Workers are not required to and should not conduct an investigation/enquiry to attempt to obtain proof that a relevant wrongdoing has occurred, is occurring or is likely to occur. Workers who have formed a reasonable belief of a relevant wrongdoing should solely disclose information which tends to show such wrongdoing, in accordance with the Procedures.
- 5.4 **What is a reasonable belief?**
- 5.4.1 It is essential for the worker to have a reasonable belief that the information which she/he discloses tends to show one or more of the relevant wrongdoings set out in paragraph 5.5. It is not essential, however, for the reasonable belief to be correct. All that is required is that the worker's belief was founded on reasonable grounds, regardless of whether the belief is mistaken or not. For example, it may be reasonable for a worker to believe, based on what she/he knows and has witnessed, that a relevant wrongdoing has occurred because she/he is not aware of all relevant facts.
- 5.4.2 No worker will be deprived of the protections set out in the Act, including protection from penalisation, if it transpires that a relevant wrongdoing did not occur, is not occurring or is not likely to occur, provided that she/he had a reasonable belief, as set out above.

5.5 What are relevant wrongdoings?

The following are relevant wrongdoings for the purposes of the Policy and Procedures:

- 5.5.1 that an offence has been, is being or is likely to be committed;
- 5.5.2 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;
- 5.5.3 that a miscarriage of justice has occurred, is occurring or is likely to occur;
- 5.5.4 that the health or safety of any individual has been, is being or is likely to be endangered;
- 5.5.5 that the environment has been, is being or is likely to be damaged;
- 5.5.6 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;
- 5.5.7 that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement; or
- 5.5.8 that information tending to show any matter falling within any of paragraphs 5.5.1 to 5.5.7 above has been, is being or is likely to be concealed or destroyed.

5.6 In connection with the worker's employment

- 5.6.1 For the disclosure of information to be protected and covered by the Policy and Procedures, it must come to the worker's attention in connection with the worker's employment. However, if it is the function of the disclosing worker or the Irish Prison Service to detect, investigate or prosecute the information which the worker discloses, the protections set out in the Act will not be available to such worker, provided that there has been no act or omission on the Irish Prison Service's part.
- 5.6.2 The Act provides that legal advisors are excluded from its protections, where information comes to their attention while providing legal advice. Where a claim to legal professional privilege could be maintained in respect of such information, it will not be a protected disclosure if it is disclosed by the legal advisor, meaning that the legal advisor will not be entitled to the protections of the Act.

6. Making a Disclosure in accordance with the Act

6.1 A worker must make a disclosure in the manner set out in the Act to be entitled to the protections of the Act. Different standards apply depending on the person or body to whom the worker makes a protected disclosure. A protected disclosure can be made in the following ways:

6.1.1 To the Irish Prison Service

The Irish Prison Service encourages all workers to make disclosures internally to the Protected Disclosures Manager of the Irish Prison Service under the Procedures. Any disclosures being made to the Protected Disclosures Manager may be made (i) by email to speakup@irishprisons.ie (ii) in person by appointment (arranged by email to speakup@irishprisons.ie) with the Protected Disclosures Manager (iii) in writing in a sealed envelope marked “confidential: for the Protected Disclosures Manager”, PO Box Number 45, an Post, Main Street, Longford. Such disclosures will be taken seriously and the worker making a protected disclosure, as defined by the Act, will be entitled to the protections set out in the Act.

6.1.2 Disclosure outside the Irish Prison Service

A worker may make a disclosure to persons other than the Irish Prison Service in certain circumstances. Different requirements need to be met in different cases, as set out at (6.1.2.1) to (6.1.2.5) below.

6.1.2.1 other responsible person

Where the worker reasonably believes that the relevant wrongdoing which the disclosure tends to show relates solely or mainly to the conduct of a person other than the worker’s employer or something for which that other person has legal responsibility, the worker may disclose to that other person.

6.1.2.2 a prescribed person

Certain persons are prescribed by Statutory Instruments to receive disclosures (“**prescribed persons**”) in relation to certain matters. These include the heads or senior officials of a range of statutory bodies including, the Comptroller and Auditor General¹, the Data Protection Commissioner², the Director General of the Environmental Protection Agency³, the Chief Executive Officer of the Food Safety Authority of Ireland⁴, Members of the Garda Síochána Ombudsman

¹ Regarding all matters relating to improper use of public funds and resources or matters concerning value for money in respect of entities that fall within the remit of the Comptroller and Auditor General.

² Regarding all matters relating to compliance with the Data Protection Acts 1988 and 2003.

³ Regarding all matters relating to the protection of the environment in the State.

⁴ Regarding All matters relating to the regulation, enforcement and monitoring of food safety in the State under the [Food Safety Authority of Ireland Act 1998](#).

Commission⁵, the Chief Executive Officer of the Health and Safety Authority⁶, the Workplace Relations Commission⁷ and the Director of Internal Audit in the Office of the Revenue Commissioners⁸.

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is a prescribed person. In the case of such a disclosure, the worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

6.1.2.3 A Minister of the Government

A worker may make a disclosure to the Minister on whom any function related to the Irish Prison Service is conferred or imposed by or under any enactment. Accordingly, workers covered by the Policy and Procedures may make a disclosure to the Minister for Justice and Equality, the Minister for Finance & Public Expenditure and Reform, and any other Minister on whom any function related to the Irish Prison Service is conferred or imposed by or under any enactment.

6.1.2.4 A Legal Adviser

A disclosure may be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

6.1.2.5 Alternative External Disclosures (Subject to Meeting Additional Requirements)

It is preferable in most circumstances to disclose to the Irish Prison Service and, if that is not appropriate, to use one of the disclosure options at 6.1.2.1 to 6.1.2.4 above. If a worker decides to make an external disclosure, additional requirements must be met for the alternative external disclosure to qualify as a protected disclosure under the Act.

The protections under the Act, reflected in the Policy and Procedures, will only be available if the following conditions are met in the case of an external disclosure:

- the worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; AND
- the disclosure must not be made for personal gain; AND

⁵ Regarding all matters relating to the functions performable by the Commission under Part 3 of the [Garda Síochána Act 2005](#).

⁶ Regarding all matters associated with legislation enforced by the Health and Safety Authority.

⁷ Regarding all matters relating to compliance with, and enforcement of, enactments imposing or conferring obligations or rights on employers and employees

⁸ Regarding all matters relating to the assessment, collection and management of taxes and duties and the implementation of customs controls.

- at least one of the following conditions at (i) to (iv) must be met:
 - (i) at the time the disclosure was made the worker reasonably believed that she/he would be penalised if she/he made the disclosure to the employer, a responsible person, a prescribed person or a minister; or
 - (ii) where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
 - (iii) the worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or a minister; or
 - (iv) the wrongdoing is of an exceptionally serious nature;

AND

- in all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.

7 DISCLOSURES RELATING TO LAW ENFORCEMENT

7.1 If a worker wishes to make a disclosure of relevant information (other than one described in paragraph 8 below), that might reasonably be expected to facilitate the commission of an offence or to prejudice or impair:

7.1.1 the prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for any of those matters;

7.1.2 the enforcement or administration of, or compliance with, any law;

7.1.3 lawful methods, systems, plans or procedures employed for ensuring the safety of the public or the safety or security of persons or property;

7.1.4 the fairness of proceedings before a court or tribunal;

7.1.5 the security of a relevant institution (which means a prison, a military prison or detention barrack, St. Patrick's Institution, a children detention school or a remand centre); or

7.1.6 the security of any system of communications of An Garda Síochána, the Defence Forces or a relevant institution

the disclosure will not be a protected disclosure unless it is made in accordance with this paragraph.

7.2 If a person has been prescribed, as referred to in paragraph 6.1.2.2 above, in relation to the relevant information, the disclosure should be made:

7.2.1 to the worker's employer, to the prescribed person or to the worker's legal adviser; or

7.2.2 in the manner specified in paragraph 6.1.2.5 to a member of Dáil Éireann or Seanad Éireann where:

7.2.2.1 the worker has made a disclosure of substantially the same relevant information to a prescribed person (as referred to in paragraph 6.1.2.2); and

7.2.2.2 a reasonable period for taking action in relation to that disclosure has passed; and

7.2.2.3 having notified the prescribed person, the worker reasonably believes that no action has been taken in relation to that disclosure or that any action so taken was inadequate.

7.3 If no person has been prescribed in relation to the relevant information, the disclosure should be made:

7.3.1 to the worker's employer or to the worker's legal adviser; or

7.3.2 in the manner specified in paragraph 6.1.2.5 to a member of Dáil Éireann or Seanad Éireann where:

(a) an investigation undertaken for the purpose of the enforcement of any law, or anything done in the course of such an investigation, or

(b) anything done for the purpose of the prevention or detection of any offence, the apprehension of an offender or the prosecution of an offence, is not authorised by law or contravenes any law.

8 CERTAIN DISCLOSURES RELATING TO SECURITY, DEFENCE, INTERNATIONAL RELATIONS AND INTELLIGENCE

8.1 Where a disclosure of information might reasonably be expected to affect adversely (i) the security of the State; (ii) the defence of the State; (iii) the international relations of the State; or (iv) to reveal, or lead to the revelation of, the identity of a person who has given information in confidence to a public body in relation to the enforcement or administration of the law or any other source of such information given in confidence, the disclosure should be made in accordance with this paragraph 8.

8.2 A list of examples of matters to which this paragraph applies is set out in **Appendix 2**.

8.3 A disclosure of information to which this paragraph 8 applies will not be a protected disclosure unless it is made:

8.3.1 to the worker's employer, a Minister (as referred to in paragraph 6.1.2.3 above) or the worker's legal adviser; or

8.3.2 in the manner specified in paragraph 6.1.2.5 to the Disclosures Recipient. The Office of the Disclosures Recipient is located at St. Stephen's Green House, (1st Floor) Earsfort Terrace, Dublin 2. Any disclosures being made under this paragraph to the Disclosures Recipient may be made either (i) in writing in a sealed envelope marked "Confidential: For the Attention of the Addressee Only" by post or delivery to the above address; or (ii) in person by appointment with the Disclosures Recipient made by email request to the email address protected.disclosure@confidentialrecipient.gov.ie.

9 PENALISATION (INCLUDING DISMISSAL AND DETRIMENT)

- 9.1 The Act provides specific remedies for workers who are penalised for making a protected 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.
- 9.2 A worker is also entitled to protection from detriment suffered by the worker because that worker, or a third party, has made a protected 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.
- 9.3 All reasonable steps will be taken to protect workers from penalisation. Workers who consider that they have experienced any act of penalisation should notify the Protected Disclosures Manager as soon as possible. The Protected Disclosures Manager will acknowledge receipt of the complaint of penalisation within five working days, or, where this is not reasonably practicable, as soon as possible.
- 9.4 The Protected Disclosures Manager will arrange for an investigation of the complaint of penalisation to be undertaken by the External Investigator. The External Investigator will investigate the complaint of penalisation and issue a report of his/her findings within sixty working days of the date upon which the investigation is commissioned, or, where this is not reasonably practicable, the Protected Disclosures Manager may extend the time period for delivery of the report by such period as is considered reasonable in the circumstances.
- 9.5 Where the External Investigator concludes that the worker was penalised within the meaning of the Act, the Irish Prison Service will take such action as it considers appropriate in the circumstances in respect of any employee whom it is determined engaged in any such penalisation, including, where appropriate, disciplinary action up to and including dismissal.
- 9.6 A summary of the steps which will be taken where a worker alleges that she/he was penalised for making a protected disclosure is set out at **Appendix 3**.
- 9.7 Workers who consider that they have been penalised (as defined above) may separately make a complaint under the Act to the Workplace Relations Commission.

10.1 The Act provides that a disclosure recipient (which in this context includes any person to whom a disclosure is referred in the performance of his/her 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, or
 - (c) the prevention of crime or prosecution of a criminal offence,

OR

- (iv) the disclosure is otherwise necessary in the public interest or is required by law.

- 10.2 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 her/him.
- 10.3 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. The discloser may request a review of this decision and a review will be carried out, where and insofar as practicable.
- 10.4 All reasonable steps will be taken to protect the identity of the discloser, and her/his identity will not be disclosed, except as set out in paragraph 10.1 above. Workers who are concerned that their identity is not being protected should notify the Protected Disclosures Manager, the Protected Disclosures Assessor or the External Investigator (as may be relevant) as soon as possible. Such notifications will be investigated and appropriate action taken, including, where appropriate, disciplinary action, up to and including dismissal.
- 10.5 Workers are prohibited from attempting to determine the identity of a discloser and from speculating as to any such discloser's identity. Where the Irish Prison Service has reasonable cause to consider that an employee has attempted to determine the identity of a discloser or speculated as to any such individual's identity, such employee may be subject to disciplinary action, up to and including dismissal.

11 ANONYMOUS DISCLOSURES

- 11.1 There is a distinction between anonymous disclosures (where identity is withheld by the discloser) and confidential disclosures (where identity is protected by the recipient). Anonymous disclosures made by workers are not excluded from the protection of the Act and the Irish Prison Service will investigate such disclosures to the extent that this is possible in the circumstances.

- 11.2 The Irish Prison Service encourages workers to provide as much information as possible in relation to the alleged relevant wrongdoing. This will enhance the Protected Disclosures Assessor and External Investigator's ability to engage with the worker and seek further information, as may be determined necessary by the Protected Disclosures Assessor and External Investigator in his/her sole discretion, and to thereby assess the disclosure, investigate the alleged relevant wrongdoing or complaint of penalisation, as effectively and efficiently as possible. Workers should note that in many instances, it may be difficult or impossible for the disclosure to be investigated unless the worker is prepared to identify herself/himself. This is because the External Investigator may not be able to investigate a disclosure properly or at all without obtaining further information from the worker making the disclosure. Where the worker withholds his/her identity, it may not be possible for the External Investigator to seek and obtain such further information as may be required to conduct an investigation in relation to the alleged relevant wrongdoing, thereby inhibiting or preventing the investigation.
- 11.3 Workers should further note that important aspects of the Policy and Procedures (protecting a discloser from penalisation) may be difficult or impossible to apply unless workers identify themselves. Furthermore, workers cannot obtain redress under the Act without identifying themselves.

12 PERSONAL COMPLAINTS AND PROTECTED DISCLOSURES - HOW TO GET HELP?

- 12.1 The Act is intended to deal with disclosures of relevant wrongdoings. This normally involves wrongdoings that are likely to cause harm to an organisation itself or to the public at large, as opposed to personal complaints.
- 12.2 Transparency International Ireland operates a confidential free-phone service for anyone considering reporting a concern or making a protected disclosure. The speak up helpline 1800 844 866 operates from 10 am to 6 pm, Monday to Friday. The email address is helpline@transparency.ie or visit www.speakup.ie. This provides free and confidential information to workers both prior to and after making a report.
- 12.3 The Procedures are not intended to act as a substitute for normal day to day operational reporting or other internal employment procedures. Personal complaints should generally be dealt with under the Irish Prison Service's Grievance or Dignity at Work procedures.

- 12.4 For example, a worker may complain that there is a breach of the worker's own terms and conditions. That type of complaint should generally be dealt with under the Irish Prison Service's Grievance procedure. Alternatively, a worker may claim that she/he is being bullied or harassed by a colleague. That type of complaint should generally be dealt with under the Irish Prison Service's Dignity at Work procedure. If a complaint is made of penalisation contrary to the Act, such complaint will be dealt with under the Procedures so as to ensure that the obligation to protect the identity of the discloser (as set out in paragraph 10.1 above) is complied with.

13 MOTIVATION

- 13.1 The motivation of the worker for making a disclosure is irrelevant to whether or not it is a disclosure protected by the Act. All disclosures will be dealt with regardless of the worker's motivation for making the disclosure, and the worker will be protected so long as the worker reasonably believes that the information disclosed tended to show a relevant wrongdoing.
- 13.2 However, a disclosure made in the absence of a reasonable belief (or other relevant standard specified in paragraph 6.1 above) will not attract the protections of the Act and may result in disciplinary action against the discloser. In addition, disclosure of a wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing or in respect of any wrongdoing.

14 MANDATORY REPORTING

- 14.1 The Act does not oblige a worker to make a disclosure and it also does not absolve any worker from pre-existing mandatory obligations to report contained in other legislation. There are several other pieces of legislation which contain mandatory reporting provisions including, the Criminal Justice Act 2011.

15 RECORDS

- 15.1 All records of disclosures should be maintained securely so as to comply with the requirements of confidentiality under the Act and with relevant obligations under the Data Protection Acts 1998 - 2018.

16 HOW TO MAKE A PROTECTED DISCLOSURE TO THE IRISH PRISON SERVICE

- 16.1 A summary of the steps which will be taken where a worker makes a disclosure, which could constitute a protected disclosure within the meaning of the Act, is set out at **Appendix 4**.
- 16.2 A worker who wishes to make a protected disclosure as defined in these Procedures should address such disclosure to the Protected Disclosures Manager. In the event that a worker makes a disclosure, which could constitute a protected disclosure, to an employee of the Irish Prison Service other than the Protected Disclosures Manager, such person shall notify the Protected Disclosures Manager of the disclosure without delay.
- 16.3 Workers are encouraged to make protected disclosures by using the protected disclosures reporting form set out at **Appendix 5** of these Procedures. However, it is recognised that on occasion it may be necessary for a protected disclosure to be made otherwise than via the form i.e. verbally. Workers who make a disclosure otherwise than by using the form are encouraged to indicate that the disclosure is being made as a protected disclosure under the Act in order to ensure the efficient assessment and/or investigation of the disclosure under the Procedures.
- 16.4 When a disclosure, which appears to be a protected disclosure, is made verbally it should be documented by the recipient. Where practicable, the discloser will be asked to confirm the information provided to ensure that there is clarity with regard to the information disclosed.
- 16.5 The Protected Disclosures Manager will acknowledge receipt of a written disclosure within five working days of receiving such disclosure, or, where this is not reasonably practicable, as soon as possible following his/her receipt of the disclosure.

17 PROCEDURES FOR THE ASSESSMENT AND INVESTIGATION OF PROTECTED DISCLOSURES

Independent Assessment, Investigation and Review

- 17.1 The Protected Disclosures Assessor is an independent, external party appointed by the Protected Disclosures Manager to conduct an assessment under these Procedures.
- 17.2 The External Investigator is an independent investigator appointed by the Protected Disclosures Manager to conduct an investigation of a disclosure made under the Policy and Procedures/a complaint of penalisation or a review, as set out in paragraph 20.1.1. 20.1.3. and 20.1.4. The independent external investigator will be chosen by the Protected Disclosures Manager.

17.3 The External Assessor is an independent assessor appointed by the Protected Disclosures Manager to conduct a review of an assessment by the Protected Disclosures Assessor (as referred to in paragraph 20.1.2).

17.4 **Assessment**

17.4.1 When a disclosure of an alleged relevant wrongdoing is made, the Protected Disclosures Manager will arrange for the Protected Disclosures Assessor to undertake an initial assessment of the disclosure under these Procedures as soon as possible. This assessment process will involve an assessment of the disclosure to determine whether or not it should be treated as a protected disclosure, having regard to the questions of (i) whether or not there was a disclosure of relevant information; (ii) made by a worker; (iii) which in the worker's belief tended to show one or more of the relevant wrongdoings set out in paragraph 5.5; and (iv) which came to the worker's attention in connection with his/her employment.

17.4.2 The Protected Disclosures Assessor may contact the discloser to seek such further information or raise such questions as she/he considers appropriate and relevant in order to carry out her/his assessment. Where reasonably practicable, the Protected Disclosures Assessor will conclude his/her assessment and issue a report of his/her assessment within ten working days of his/her receipt of the disclosure. Where it appears to the Protected Disclosures Assessor that it will not be reasonably practicable for him/her to complete the assessment and issue his/her report of assessment within the above timeframe, she/he shall notify the Protected Disclosures Manager and the Protected Disclosures Manager shall notify the worker concerned as soon as possible. The Protected Disclosures Manager may extend the time period for delivery of the report by such period as is considered reasonable in the circumstances.

17.4.3 It may be necessary, as part of this assessment process, to differentiate between protected disclosures and personal complaints. For example, where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary to separate the different elements of the complaint/disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

17.5 Investigation

- 17.5.1 In some cases the matter may need to be reported to, and investigated by An Garda Síochána or another body with the statutory power and function for the investigation of particular matters.
- 17.5.2 Following conclusion of the assessment process, and, where reasonably practicable, within five working days of his/her receipt of the report referred to above, the Protected Disclosures Manager shall write to the worker who made the disclosure and notify him/her of next steps.
- 17.5.3 If the Protected Disclosures Assessor concluded that the disclosure should not be treated as a protected disclosure, the Protected Disclosures Manager will notify the worker who made the disclosure of his/her right to seek a review of that assessment under paragraph 20 of these Procedures. The worker shall be required to set out in writing the specific grounds upon which she/he asserts that the disclosure should be treated as a protected disclosure within the meaning of the Act.
- 17.5.4 If the Protected Disclosures Assessor concluded that the disclosure should be treated as a protected disclosure, the Protected Disclosures Manager will notify the worker who made the disclosure that an investigation will be undertaken by the External Investigator. The External Investigator will investigate the protected disclosure to determine whether or not the worker had a reasonable belief that the information advanced tended to show one or more of the relevant wrongdoings referred to at paragraph 5.5 and, if so, whether there was any relevant wrongdoing. The External Investigator will issue a report to the Protected Disclosures Manager of his/her findings within sixty working days of the date upon which the investigation is commissioned, or, where this is not reasonably practicable, within such further period as the External Investigator shall notify to the Protected Disclosures Manager.
- 17.5.5 If, after an appropriate investigation has been undertaken, the External Investigator determines that wrongdoing has occurred, is occurring or is likely to occur the findings will be addressed and appropriate action will be taken where necessary. These findings may be considered and relied upon in any disciplinary process(es) which ensue.

18 PROTECTION OF RIGHTS OF RESPONDENTS

- 18.1 Where an allegation is made against an individual (the respondent), the principles of natural justice and fair procedures will be complied with, as appropriate.

19 Disciplinary record of discloser and other related matters

- 19.1 Where a worker makes a disclosure of alleged wrongdoing it will be given appropriate consideration under these Procedures. The Irish Prison Service will focus on the disclosure made i.e. the information which, in the worker's reasonable belief, tends to show one or more relevant wrongdoings. In general where a protected disclosure is made during an investigation, disciplinary or other Irish Prison Service process, this should not affect those distinct processes. However, an exception might be made where the worker can demonstrate that the investigation, disciplinary or other action is a form of penalisation for making a protected disclosure.

20 REVIEW

- 20.1 A review may be sought in relation to the following:
- 20.1.1 by the discloser in respect of any decision made to disclose his/her identity (except in exceptional cases) or by a person in respect of whom a protected disclosure is made not to disclose the identity of the discloser;
 - 20.1.2 the outcome of the assessment undertaken in respect of the disclosure which may be notified to him/her under these Procedures; and/or
 - 20.1.3 the outcome of the investigation undertaken in respect of the disclosure which may be notified to him/her under these Procedures; and/or
 - 20.1.4 the outcome of the investigation in respect of any complaint of penalisation.
- 20.2 The worker concerned shall be required to notify the Protected Disclosures Manager of his/her desire to seek a review of any of the matters referred to in paragraph 20.1.1 to 20.1.4 within five working days of his/her being notified of the decision/outcome. The Protected Disclosures Manager may extend the time period within which a worker may seek such a review by an additional period of up to five working days where the Protected Disclosures Manager is satisfied that reasonable cause prevented the worker from seeking the review within a period of five working days.

- 20.3 Any review under paragraphs 20.1.1, 20.1.3 or 20.1.4 will be undertaken by another External Investigator who was not involved in the investigation or decision under review and any review under paragraph 20.1.2 will be undertaken by an External Assessor who was not involved in the assessment under review.
- 20.4 Where a decision is taken to disclose the identity of the discloser (otherwise than pursuant to a review conducted under paragraph 20.1.1 above), where practicable, the discloser should be offered a review before his/her identity is disclosed.
- 20.5 There is no entitlement to more than one review in respect of any of the issues referred to in paragraph 20.1.1 to 20.1.4 above.

21 FEEDBACK

- 21.1 The Protected Disclosures Assessor and the External Investigator will provide periodic feedback to the Protected Disclosures Manager in relation to the conduct of an assessment, investigation or review.
- 21.2 Workers making disclosures will be provided with periodic and confidential feedback, as considered appropriate by the Protected Disclosures Manager, in relation to the assessment, investigation or review and will be advised when it is complete, except in exceptional cases. When providing feedback no information will be communicated that could prejudice the outcome of the assessment, investigation or review or any action that might ensue (e.g. disciplinary or other legal action, including prosecution).

22 REVIEW OF POLICY AND AMENDMENTS

- 22.1 In accordance with the IPS policy development process, this Policy has been ratified by the Executive Management Team (EMT). This Policy will be operational from the date of issue as stated on the cover page and shall remain in force until revoked by the EMT or revised. Allegations regarding protected disclosures made prior to the date of issue will continue to be dealt with by the Department of Justice and Equality.
- 22.2 The Irish Prison Service is committed to ensuring that the Policy and Procedures are reviewed regularly to ensure that they reflect best practice and any changes in the law which may occur from time to time.

- 22.3 The Policy and Procedures will be reviewed by the Irish Prison Service no later than 1 July 2020 and thereafter from time to time as the Irish Prison Service considers necessary to take account of legal changes and best practice. As part of the review, the Protected Disclosures Manager may seek feedback from workers who have been involved in an assessment/investigation under the Procedures.

23 SUPPORT

- 23.1 The Employee Assistance Programme and the independent counselling service are available at all times to Irish Prison Service employees, including those who make a protected disclosure and those involved in the investigation of a protected disclosure.
- 23.2 The Irish Prison Service is a member of the Integrity At Work Programme (“IAW”), an initiative of Transparency International (“TI”) Ireland. The IAW is aimed at promoting a safer working environment for people who speak up about wrongdoing. Independent and confidential advice is available to workers (who have made or are considering making a disclosure) via TI Ireland’s speak up helpline at 1800 844 866, Monday to Friday 10am to 6pm. A guide to making a protected disclosure is available at https://transparency.ie/sites/default/files/14.12.02_speak_up_safely_final.pdf

24 ANNUAL REPORTING

- 24.1 In accordance with its obligations under the Act, no later than 30 June each year, the Irish Prison Service will prepare and publish a report in relation to the previous year, setting out (i) the number of protected disclosures made to the Irish Prison Service; and (ii) any action taken in response to such protected disclosures.
- 24.2 The report shall be published in a form which does not enable the identification of persons involved in the protected disclosures.

APPENDIX 1



THE INTEGRITY AT WORK PLEDGE

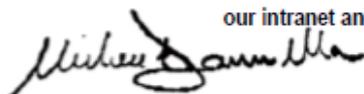
The Irish Prison Service recognises the importance of developing an ethical workplace and the valuable contribution of those who raise concerns about wrongdoing. We commit to not penalising, or permitting penalisation against, a worker who reports risks or incidents of wrongdoing and to responding to or acting upon those concerns.

In committing ourselves to this pledge we will work towards implementing a 'whistleblowing'/protected disclosures policy and procedures which:

- a. Promote the reporting of wrongdoing or the risk of harm to a responsible person inside the organisation or external bodies as appropriate.
- b. Provide comprehensive information about the types of disclosures that can be made, by whom and in respect of what.
- c. Encourage our workers to seek professional advice both prior or subsequent to making a report.
- d. Assure our workers that any report will be dealt with in the strictest confidence and that their identity or identifying information will not be disclosed to third parties unless required by law or necessary for the purposes of conducting an investigation.
- e. Provide our workers with sufficient notice and a timely explanation in the event that his or her identity is to be disclosed to a third party.
- f. Confirm that reports will be acted upon within a reasonable time frame and take whatever remedial action is deemed necessary by the organisation to address any wrongdoing or the risk of wrongdoing that might have been identified in response to the report.
- g. Commit to keeping any worker who makes a report informed of the progress of investigations.
- h. Provide for appropriate disciplinary action to be taken against anyone found to have penalised a worker for (i) having reported wrongdoing or (ii) refusing to engage in wrongdoing.
- i. Additionally, the organisation commits to record anonymised data each year on i) the number of reports made to it under the Protected Disclosures Act 2014, ii) the nature of each report, iii) the number of complaints of retaliation against workers who have made disclosures and iv) the action taken in response to each report.
- j. Share this data (as set out in paragraph i) with the Department of Justice and Equality and/or with the Minister of Public Expenditure and Reform (where appropriate).
- k. Ensure that our managers and responsible persons are aware of our commitments under this Pledge and related policies and procedures and are adequately trained in handling a report.
- l. Publicise our commitment to the Integrity at Work initiative with our workers and other relevant stakeholders.

Details of our Protected Disclosures Policy and Procedures can be found on

our intranet and website at <http://www.irishprisons.ie/>



Director General

Governor

1 July 2018

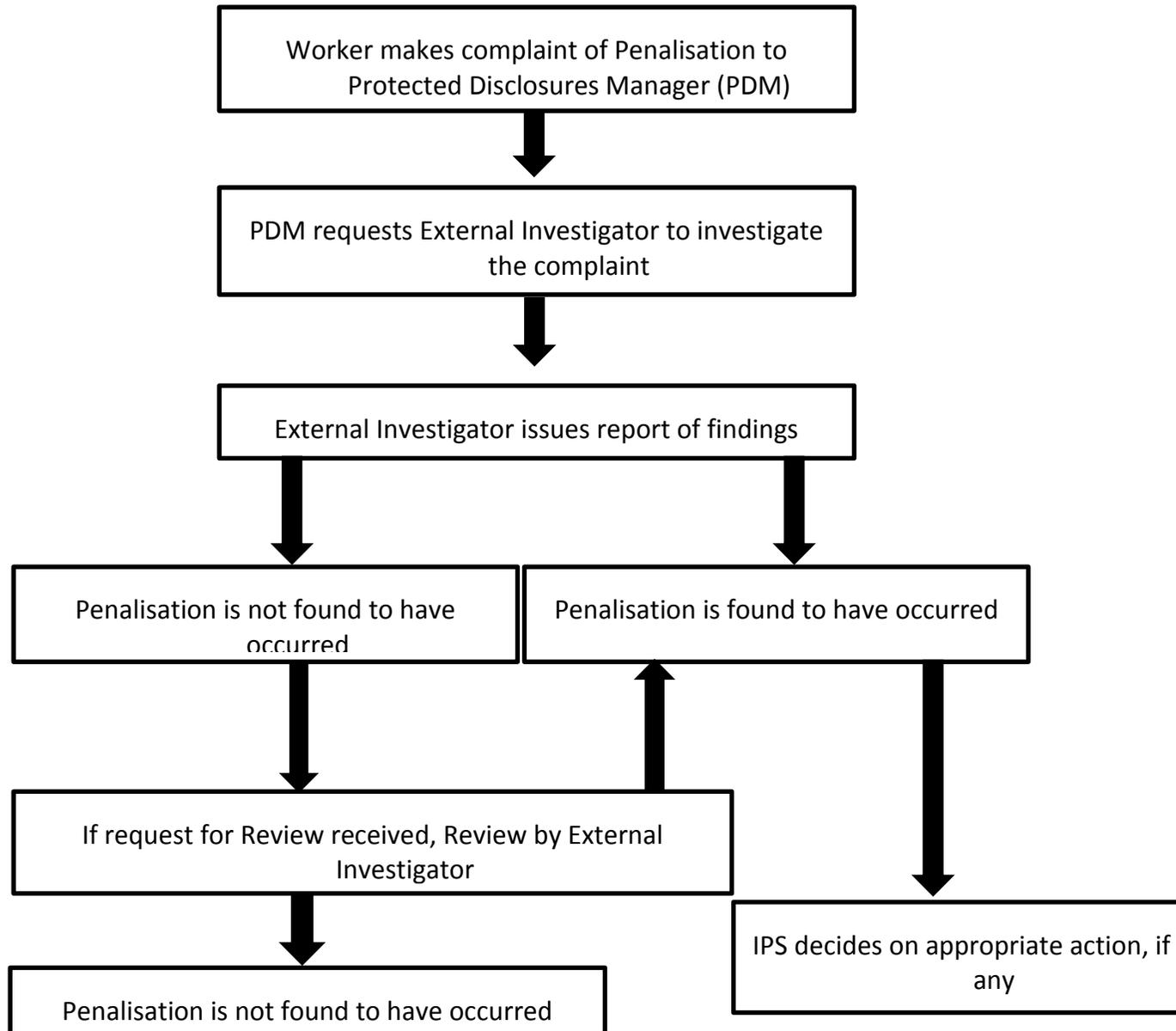
Appendix 2

Certain disclosures relating to security, defence, international relations and intelligence

The disclosures of information to which paragraph 8 of the Policy applies include disclosures of information:

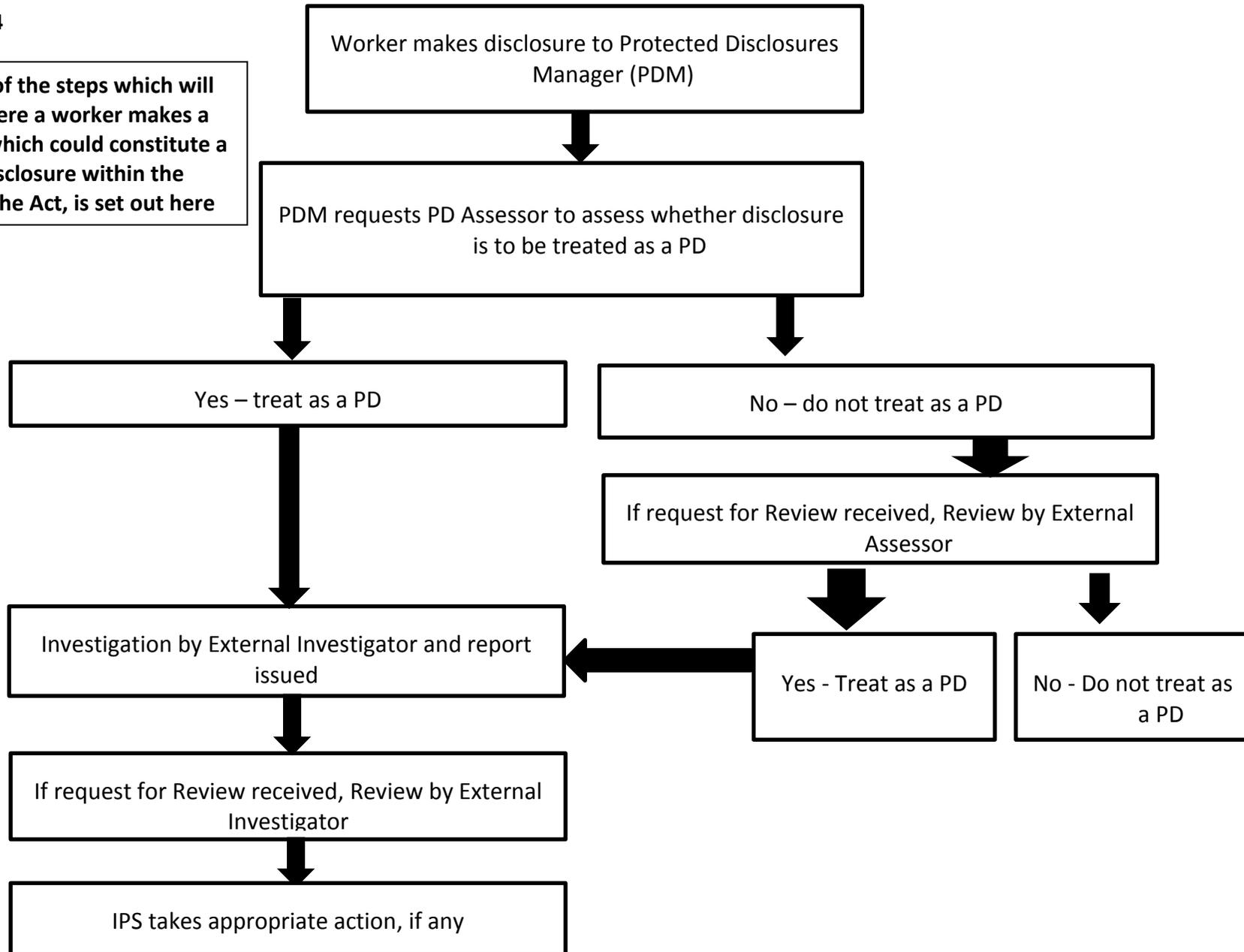
- (a) which was obtained or prepared for the purpose of intelligence in respect of the security or defence of the State,
- (b) which relates to—
 - (i) the tactics, strategy or operations of the Defence Forces in or outside the State, or
 - (ii) the detection, prevention or suppression of activities calculated or tending to undermine the public order or the authority of the State (which expression has the same meaning as in section 2 of the Offences Against the State Act 1939);
- (c) which consists of a communication between a Minister of the Government and a diplomatic mission or consular post in the State or a communication between the Government or a person acting on behalf of the Government and another government or a person acting on behalf of another government;
- (d) which consists of a communication between a Minister of the Government and a diplomatic mission or consular post of the State;
- (e) which was communicated in confidence to any person in or outside the State from any person in or outside the State, relates to a matter referred to in paragraph 8.1 of the Policy or to the protection of human rights and was expressed by the latter person to be confidential or to be communicated in confidence;
- (f) which was communicated in confidence from, to or within an international organisation of states or a subsidiary organ of such an organisation or an institution or body of the European Union or relates to negotiations between the State and such an organisation, organ, institution or body or within or in relation to such an organisation, organ, institution or body; or
- (g) which is contained in a record of an organisation, organ, institution or body referred to in paragraph (f) and the disclosure of which is prohibited by the organisation, organ, institution or body.

Appendix 3: A summary of the steps which will be taken where a worker alleges that she/he was penalised for making a protected disclosure is outlined here:



APPENDIX 4

A summary of the steps which will be taken where a worker makes a disclosure, which could constitute a protected disclosure within the meaning of the Act, is set out here



APPENDIX 5

PROTECTED DISCLOSURES REPORTING FORM

The Irish Prison Service welcomes workers making protected disclosures under the Protected Disclosures Act 2014. Where possible, this form should be used for making a protected disclosure. Before completing this form, a worker should:

- (a) Consider whether what is being disclosed is a protected disclosure and whether the Irish Prison Service's Protected Disclosures Procedures (the "**Procedures**") are relevant and applicable or whether another Irish Prison Service policy (such as the Grievance Procedure/Dignity at Work Policy) is applicable.
- (b) Ensure that she/he has a reasonable belief that the information being disclosed tends to show one or more relevant wrongdoings, as set out in paragraph 5 of the Policy.

Reports should be submitted to the Protected Disclosures Manager.

Name of the worker making the disclosure (the "discloser")	
Position of the discloser	
Place of work	
Confidential contact information of discloser	
Date of the alleged wrongdoing (if known) or date that the alleged wrongdoing commenced or was identified	
Is the alleged wrongdoing still ongoing?	
Has the alleged wrongdoing already been disclosed? If so, to whom and when and what Action (if any) was taken?	
Please provide full details of the alleged wrongdoing and any supporting information/documentation	
Please provide details of the name of the individual(s) allegedly involved in the alleged wrongdoing (if known and if the discloser considers that naming any such individual(s) is necessary to expose the alleged wrongdoing)	
Please provide details of any other information which may be relevant	

END OF DOCUMENT