



## 2016 CHAPTER 15

### *Protected disclosures*

#### **Disclosures not protected unless believed to be made in the public interest**

**13** In Article 67B of the Employment Rights (Northern Ireland) Order 1996 (disclosures qualifying for protection), in paragraph (1), after “in the reasonable belief of the worker making the disclosure,” insert “is made in the public interest and”.

#### **Commencement Information**

**II** S. 13 in operation at 1.10.2017 by S.R. 2017/199, art. 2(1)

#### **Power to reduce compensation where disclosure not made in good faith**

**14.—(1)** Omit the words “in good faith” in the following provisions of Part 5A of the Employment Rights (Northern Ireland) Order 1996 (protected disclosures)—

- (a) paragraph (1) of Article 67C (disclosure to employer or other responsible person);
  - (b) paragraph (b) of Article 67E (disclosure to Minister of the Crown or Northern Ireland department);
  - (c) paragraph (1)(a) of Article 67F (disclosure to prescribed person).
- (2)** In Article 67G of that Order (disclosure in other cases), in paragraph (1)—
- (a) omit sub-paragraph (a);
  - (b) in sub-paragraph (b), for “he” substitute “the worker”.

*Status: Point in time view as at 01/10/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Employment Act (Northern Ireland) 2016, Cross Heading: Protected disclosures. (See end of Document for details)*

(3) In Article 67H of that Order (disclosure of exceptionally serious failures), in paragraph (1)—

- (a) omit sub-paragraph (a);
- (b) in sub-paragraph (b), for “he” substitute “ the worker ”.

(4) In Article 72 of that Order (remedies), after paragraph (6) insert—

“(6A) Where—

- (a) the complaint is made under Article 71(1A), and
- (b) it appears to the tribunal that the protected disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.”.

(5) In Article 157 of that Order (compensatory award), after paragraph (6) insert—

“(6A) Where—

- (a) the reason (or principal reason) for the dismissal is that the complainant made a protected disclosure; and
- (b) it appears to the tribunal that the disclosure was not made in good faith,

the tribunal may, if it considers it just and equitable in all the circumstances to do so, reduce any award it makes to the worker by no more than 25%.”.

#### Commencement Information

I2 S. 14 in operation at 1.10.2017 by S.R. 2017/199, art. 2(1)

### Protected disclosures: reporting requirements

**15** After Article 67F of the Employment Rights (Northern Ireland) Order 1996 (disclosure to prescribed person) insert—

#### “Prescribed persons: duty to report on disclosure of information

**67FA.**—(1) The Department may make regulations requiring a person prescribed for the purposes of Article 67F to produce an annual report on disclosures of information made to the person by workers.

(2) The regulations must set out the matters that are to be covered in a report, but must not require a report to provide detail that would enable either of the following to be identified—

- (a) a worker who has made a disclosure;

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- (b) an employer or other person in respect of whom a disclosure has been made.
- (3) The regulations must make provision about the publication of a report, and such provision may include (but is not limited to) any of the following requirements—
  - (a) to send the report to the Department for laying before the Assembly or to the Secretary of State for laying before both Houses of Parliament;
  - (b) to include the report in another report or in information required to be published by the prescribed person;
  - (c) to publish the report on a website.
- (4) The regulations may make provision about the time period within which a report must be produced and published.”.

#### Commencement Information

**I3** S. 15 in operation at 1.10.2017 by S.R. 2017/199, art. 2(1)

### Worker subjected to detriment by co-worker or agent of employer

**16.—(1)** In Article 70B of the Employment Rights (Northern Ireland) Order 1996 (protected disclosures), after paragraph (1) insert—

“(1A) A worker (“W”) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, done—

- (a) by another worker of W's employer in the course of that other worker's employment, or
- (b) by an agent of W's employer with the employer's authority,

on the ground that W has made a protected disclosure.

(1B) Where a worker is subjected to detriment by anything done as mentioned in paragraph (1A), that thing is treated as also done by the worker's employer.

(1C) For the purposes of paragraph (1B), it is immaterial whether the thing is done with the knowledge or approval of the worker's employer.

(1D) In proceedings against W's employer in respect of anything alleged to have been done as mentioned in paragraph (1A)(a), it is a defence for the employer to show that the employer took all reasonable steps to prevent the other worker—

- (a) from doing that thing, or
- (b) from doing anything of that description.

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(1E) A worker or agent of W's employer is not liable by reason of paragraph (1A) for doing something that subjects W to detriment if—

- (a) the worker or agent does that thing in reliance on a statement by the employer that doing it does not contravene this Order, and
- (b) it is reasonable for the worker or agent to rely on the statement.

But this does not prevent the employer from being liable by reason of paragraph (1B).”.

(2) In Article 71 of that Order (complaints to industrial tribunals), in paragraph (5)—

- (a) for “includes, where” substitute “includes—
  - “(a) where”;
- (b) at the end insert—
  - “(b) in the case of proceedings against a worker or agent under Article 70B(1A), the worker or agent.”.

#### **Commencement Information**

**I4** S. 16 in operation at 1.10.2017 by S.R. 2017/199, art. 2(1)

#### **Extension of meaning of “worker”**

**17.—**(1) Article 67K of the Employment Rights (Northern Ireland) Order 1996 (extension of meaning of “worker”) is amended as follows.

- (2) In paragraph (1), after sub-paragraph (c) insert—
  - “(ca) is or was provided with work experience provided pursuant to a course of education or training approved by, or under arrangements with, the Nursing and Midwifery Council in accordance with Article 15(6)(a) of the Nursing and Midwifery Order 2001 (S.I. 2002/253); or”.
- (3) In paragraph (2)(c), after “sub-paragraph” insert “ (ca) or ”.
- (4) After paragraph (3) add—
  - “(4) The Department may by order make amendments to this Article as to what individuals count as “workers” for the purposes of this Part (despite not being within the definition in Article 3(3)).
  - (5) An order under paragraph (4) may not make an amendment that has the effect of removing a category of individual unless the Department is satisfied that there are no longer any individuals in that category.”.

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**Commencement Information**

**I5** [S. 17](#) in operation at 1.10.2017 by [S.R. 2017/199](#), [art. 2\(1\)](#)

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