STATUTORY INSTRUMENTS

1998 No. 1763

The Public Interest Disclosure (Northern Ireland) Order 1998

Protected disclosures

3. After Part V of the 1996 Order there shall be inserted—

"PART VA

PROTECTED DISCLOSURES

Meaning of "protected disclosure"

67A. In this Order a "protected disclosure" means a qualifying disclosure (as defined by Article 67B) which is made by a worker in accordance with any of Articles 67C to 67H.

Disclosures qualifying for protection

67B.—(1) In this Part a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, tends to show one or more of the following—

(a) that a criminal offence has been committed, is being committed or is likely to be committed,

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding sub-paragraphs has been, is being or is likely to be deliberately concealed.

(2) For the purposes of paragraph (1), it is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

(3) A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

(4) A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

(5) In this Part "the relevant failure", in relation to a qualifying disclosure, means the matter falling within sub-paragraphs (a) to (f) of paragraph (1).

Disclosure to employer or other responsible person

67C.—(1) A qualifying disclosure is made in accordance with this Article if the worker makes the disclosure in good faith—

(a) to his employer, or

(b) where the worker reasonably believes that the relevant failure relates solely or mainly to—

(i) the conduct of a person other than his employer, or

(ii) any other matter for which a person other than his employer has legal responsibility, to that other person.

(2) A worker who, in accordance with a procedure whose use by him is authorised by his employer, makes a qualifying disclosure to a person other than his employer, is to be treated for the purposes of this Part as making the qualifying disclosure to his employer.

Disclosure to legal adviser

67D. A qualifying disclosure is made in accordance with this Article if it is made in the course of obtaining legal advice.

Disclosure to Minister of the Crown or a Northern Ireland department

67E. A qualifying disclosure is made in accordance with this Article if—

(a) the worker's employer is—

(i) an individual appointed under any statutory provision by a Minister of the Crown or a Northern Ireland department, or

(ii) a body any of whose members are so appointed, and

(b) the disclosure is made in good faith to a Minister of the Crown or a Northern Ireland department.

Disclosure to prescribed person

67F.—(1) A qualifying disclosure is made in accordance with this Article if the worker—

(a) makes the disclosure in good faith to a person prescribed by an order made by the Department for the purposes of this Article, and

(b) reasonably believes—

(i) that the relevant failure falls within any description of matters in respect of which that person is so prescribed, and

(ii) that the information disclosed, and any allegation contained in it, are substantially true.

(2) An order prescribing persons for the purposes of this Article may specify persons or descriptions of persons, and shall specify the descriptions of matters in respect of which each person, or persons of each description, is or are prescribed.

Disclosure in other cases

67G.—(1) A qualifying disclosure is made in accordance with this Article if—

(a) the worker makes the disclosure in good faith,

(b) he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) any of the conditions in paragraph (2) is met, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) The conditions referred to in paragraph (1)(d) are—

(a) that, at the time he makes the disclosure, the worker reasonably believes that he will be subjected to a detriment by his employer if he makes a disclosure to his employer or in accordance with Article 67F,

(b) that, in a case where no person is prescribed for the purposes of Article 67F in relation to the relevant failure, the worker reasonably believes that it is likely that evidence relating to the relevant failure will be concealed or destroyed if he makes a disclosure to his employer, or

(c) that the worker has previously made a disclosure of substantially the same information—

(i) to his employer, or

(ii) in accordance with Article 67F.

(3) In determining for the purposes of paragraph (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to—

(a) the identity of the person to whom the disclosure is made,

(b) the seriousness of the relevant failure,

(c) whether the relevant failure is continuing or is likely to occur in the future,

(d) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person,

(e) in a case falling within paragraph (2)(c)(i) or (ii), any action which the employer or the person to whom the previous disclosure in accordance with Article 67F was made has taken or might reasonably be expected to have taken as a result of the previous disclosure, and

(f) in a case falling within paragraph (2)(c)(i), whether in making the disclosure to the employer the worker complied with any procedure whose use by him was authorised by the employer.

(4) For the purposes of this Article a subsequent disclosure may be regarded as a disclosure of substantially the same information as that disclosed by a previous disclosure as mentioned in paragraph (2)(c) even though the subsequent disclosure extends to information about action taken or not taken by any person as a result of the previous disclosure.

Disclosure of exceptionally serious failure

67H.—(1) A qualifying disclosure is made in accordance with this Article if—

(a) the worker makes the disclosure in good faith,

(b) he reasonably believes that the information disclosed, and any allegation contained in it, are substantially true,

(c) he does not make the disclosure for purposes of personal gain,

(d) the relevant failure is of an exceptionally serious nature, and

(e) in all the circumstances of the case, it is reasonable for him to make the disclosure.

(2) In determining for the purposes of paragraph (1)(e) whether it is reasonable for the worker to make the disclosure, regard shall be had, in particular, to the identity of the person to whom the disclosure is made.

Contractual duties of confidentiality

67J.—(1) Any provision in an agreement to which this Article applies is void in so far as it purports to preclude the worker from making a protected disclosure.

(2) This Article applies to any agreement between a worker and his employer (whether a worker's contract or not), including an agreement to refrain from instituting or continuing any proceedings under this Order or any proceedings for breach of contract.

Extension of meaning of "worker" etc. for Part VA

67K.—(1) For the purposes of this Part "worker" includes an individual who is not a worker as defined by Article 3(3) but who—

(a) works or worked for a person in circumstances in which—

(i) he is or was introduced or supplied to do that work by a third person, and

(ii) the terms on which he is or was engaged to do the work are or were in practice substantially determined not by him but by the person for whom he works or worked,by thethird person orby both ofthem,

(b) contracts or contracted with a person, for the purposes of that person's business, for the execution of work to be done in a place not under the control or management of that person and would fall within Article 3(3)(b) if for "personally" in that provision there were substituted " (whether personally or otherwise) ",

(c) works or worked as a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services in accordance with arrangements made by a Health and Social Services Board under Article 56, 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972, or

(d) is or was provided with work experience provided pursuant to a training course or programme or with training for employment (or with both) otherwise than—

(i) under a contract of employment, or

(ii) by an educational establishment on a course run by that establishment;

and any reference to a worker's contract, to employment or to a worker being "employed" shall be construed accordingly.

(2) For the purposes of this Part "employer" includes—

(a) in relation to a worker falling within sub-paragraph (a) of paragraph (1), the person who substantially determines or determined the terms on which he is or was engaged,

(b) in relation to a worker falling within sub-paragraph (c) of that paragraph, the board referred to in that sub-paragraph, and

(c) in relation to a worker falling within sub-paragraph (d) of that paragraph, the person providing the work experience or training.

(3) In this Article "educational establishment" includes any university, college, school or other educational establishment.

Other interpretative provisions

67L.—(1) In this Part—

"Northern Ireland department" includes the head of a Northern Ireland department;

"qualifying disclosure" has the meaning given by Article 67B;

"the relevant failure", in relation to a qualifying disclosure, has the meaning given by Article 67B(5).

(2) In determining for the purposes of this Part whether a person makes a disclosure for purposes of personal gain, there shall be disregarded any reward payable by or under any statutory provision.

(3) Any reference in this Part to the disclosure of information shall have effect, in relation to any case where the person receiving the information is already aware of it, as a reference to bringing the information to his attention.".

Changes to legislation:
There are currently no known outstanding effects for the The Public Interest Disclosure (Northern Ireland) Order 1998, Section 3.