



Protected Disclosures Policy

July 2017

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1. INTRODUCTION

- 1.1 The purpose of the Protected Disclosures Act, 2014 (“the Act”) is to promote and encourage a workplace culture which values concerns being raised about potential wrongdoing in the workplace, and which takes appropriate action in response to such disclosures. It enables workers to raise concerns about possible workplace wrongdoing, safe in the knowledge that workplace safeguards exist against reprisals being taken against them. It requires every public body to have internal procedures for dealing with protected disclosures and to provide these in writing to workers. The Act came into operation on 15 July 2014.
- 1.2 The Office of Public Works (OPW) is committed to fostering an appropriate environment for addressing concerns relating to potential wrongdoing in the workplace and to providing the necessary support for workers who raise genuine concerns.
- 1.3 This Policy outlines the principles for protected disclosures within the OPW and the procedures for dealing with these disclosures.
- 1.4 This Policy does not cover personal complaints or personal grievances. The existing Grievance Procedures under Circular 11/2001 and the Joint Industrial Council for State Industrial Employees Code of Practice on Grievance Procedures, 2009 should continue to be used for dealing with workplace grievances.
- 1.5 The Policy does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure, which they know to be false or do not believe to be true then this disclosure does not attract the protection of the 2014 Act and the OPW will take disciplinary or other appropriate action. In addition, disclosure of a wrongdoing does not necessarily confer any protection or immunity on a worker in relation to any involvement they may have had in that wrongdoing
- 1.6 This Policy aims to give effect to the obligations and provisions of the Act and does not replace any legal reporting or disclosure requirements arising under other legislation. There must be full compliance with statutory reporting requirements or procedures where these exist.
- 1.7 Where an issue is raised under the Act, the OPW will apply the following principles:
- (a) Workers in the OPW will be encouraged to raise reasonable concerns about possible wrongdoing in the workplace so that these concerns can be addressed.
 - (b) Workers should not need to seek access to the protections afforded by the Act as all disclosures of wrongdoing in the workplace will, as a matter of routine, be treated seriously and investigated appropriately.
 - (c) A working environment will be fostered which focuses on responding to the *message* and not on the *messenger*.
 - (d) Support is available through the Employee Assistance Programme to workers who make disclosures of possible wrongdoing.
 - (e) The OPW will ensure that competent, timely assessment and investigation of reports of wrongdoing take place followed, where necessary, by an appropriate response. The discloser will be informed as to how the issue has been addressed, including the outcome of any investigation.

- (f) Workers who make protected disclosures will not be disadvantaged in any way for having made the disclosure, even if no wrongdoing is identified, providing the concern was based on a reasonable belief. Incidents of reprisal against a person making a disclosure under this Policy will be subject to disciplinary action.
- (g) The Office will take all reasonable steps to treat disclosures made under this Policy in a confidential and sensitive manner. The Office will not disclose the discloser's identity without their consent, unless it is required by law or necessary for the effective investigations of the relevant wrongdoing.

2. WHAT IS A PROTECTED DISCLOSURE?

- 2.1 A '**protected disclosure**' is defined in the Act as the disclosure of information which, a worker reasonably believes tends to show one or more *relevant wrongdoings*. The information must come to the worker's attention in connection with his or her employment. For example, a disclosure will not be protected if it relates to matters in someone's personal life outside and unconnected to the workplace. A disclosure must be made as prescribed in the Act (and as set out in Section 4 of this Policy). The worker's motivation for making a disclosure is irrelevant.
 - 2.2 When a disclosure of wrongdoing is made, it is not possible to know if a claim for protection will be made or if such a claim will be upheld. Equally a worker may not indicate that he or she regards his or her disclosure as protected. As a result, all disclosures are presumed to be protected disclosures under the Act, unless it is proved otherwise
 - 2.3 A '**discloser**' is the worker making a disclosure. A '**recipient**' is the person receiving a disclosure (either directly or by referral).
 - 2.4 '**Relevant wrongdoings**' are as defined in the Act. The following eight matters are relevant wrongdoings:
 - (a) Commission of a criminal offence
 - (b) Failure to comply with any legal obligation, other than those arising under contracts of employment or for services
 - (c) A miscarriage of justice
 - (d) A danger to the health or safety of any individual
 - (e) Damage to the environment
 - (f) Unlawful or otherwise improper use of OPW funds or resources, or of other public money
 - (g) An act or omission by, or on behalf of, the OPW that is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement
 - (h) Concealment or destruction of information on any of (a) to (g) above.
- These may have occurred in the past, continue to occur or be likely to occur in the future. The location of a relevant wrongdoing is immaterial and can be anywhere in the world. It also does not matter whether Irish law applies or not.
- 2.5 Where it is the function of the worker, or the worker's employer, to detect, investigate or prosecute a matter which does not involve an act or omission by the employer, then that matter is **not** a relevant wrongdoing and its disclosure is **not** protected.
 - 2.6 A disclosure where legal privilege is claimed, is not protected if it is made by a person who received it in the course of giving legal advice.

3. TO WHOM DOES THIS POLICY APPLY?

This policy is applicable to workers in the OPW defined as follows:

- a) all full time and part time OPW employees;
- b) former OPW employees (where they do not qualify under the protection of another employer);
- c) graduates and apprentices on placement with the OPW;
- d) contractors, consultants, self-employed persons acting on behalf of the OPW;
- e) workers of companies that supply the OPW with goods and services;
- f) volunteers working with the OPW.

The protections under the Act that apply only to employees by virtue of their employment will only apply to workers at (a) to (e) above. Volunteers will not attract the protections under the Act which apply only to employees by virtue of their employment.

4. HOW TO MAKE A DISCLOSURE

4.1 A worker should make a disclosure if they have reasonable belief that a relevant wrongdoing has occurred, is occurring or is likely to occur or there has been a breach of OPW or civil service guidance such that harm may be arising to others or to the OPW.

4.2 The legislation provides for five avenues of disclosure:

(a) An internal disclosure to the Director of Corporate Services or to the Chairman. See section 4.5 for instructions on making an internal disclosure.

(b) An external disclosure to a prescribed person (as listed in Schedule 3 of the Act) and SI No. 339 of 2014 Protected Disclosures Act 2014 (Section 7(2)) Order 2014. See section 4.6 for instructions on making an external disclosure to a prescribed person.

(c) An external disclosure to the Minister for Public Expenditure and Reform. See section 4.7 for instructions on making an external disclosure to the Minister.

(d) An external disclosure to a legal advisor, including a barrister, solicitor or trade union official. See section 4.8 for instructions.

(e) An external disclosure in other cases. See section 4.9 for instructions.

4.3 While a disclosure (most likely written) may be made anonymously, it should be noted that the extent to which the wrongdoing disclosed can be investigated is significantly restricted in such cases, as it is not possible to follow up with the discloser if further information or clarification is required or for the discloser to be advised on how the issue has been addressed, including the outcome of any investigation. It is not possible for a worker to obtain redress under the 2014 Act without identifying themselves.

4.4 A worker intending to make a disclosure should not carry out an investigation outside of the normal scope of their duties with a view to seeking to confirm any perceived wrongdoing.

4.5 How to Make an Internal Disclosure

4.5.1 The contact details for recipients of Protected Disclosures internally within the OPW are included at Appendix 1.

- 4.5.2 A worker who wishes to make a written disclosure should use the OPWPD01 form. The worker should keep his or her own copy of the disclosure form and any information provided with it.
- 4.5.3 A worker who has a concern may make an internal disclosure verbally or, preferably, in writing directly to the Director of Corporate Services. Where a disclosure is made verbally it is vital that the recipient fully documents it using the OPWPD01 form.
- 4.5.4 If a worker reasonably believes there are circumstances preventing him or her from reporting their concerns to the Director of Corporate Services then the worker should make the disclosure to the Chairman. In doing so, the worker should clearly set out the circumstances which prevent the disclosure being made to the Director of Corporate Services in the first instance.
- 4.5.5 Where a worker reasonably believes that the wrongdoing they are reporting relates mainly either to:
- the conduct of a person other than their employer or
 - something for which a person other than their employer has legal responsibility
- then a disclosure should be made to that other person and is considered by the Act as an internal disclosure to the OPW.
- 4.5.6 The OPW may appoint specialist, third parties (not employed by OPW) to act as recipients of protected disclosures. Where a worker makes a disclosure to such a third party recipient, this will be regarded as the worker having made the disclosure internally within the OPW.

4.6 How to Make an External Disclosure to a Prescribed Person

- 4.6.1 Workers are encouraged to raise their concerns under the internal disclosure procedure set out in section 4.5 in the first instance. However, it is recognised that this may not always be appropriate, so a worker may make an external disclosure to a prescribed person in circumstances where he or she reasonably believes that:
- (i) The information disclosed, and any **allegations contained in it, are substantially true**, and
 - (ii) The relevant wrongdoing falls within the remit of the prescribed person.
- 4.6.2 The full list of *prescribed persons* can be found in Schedule 3 of the Act and SI No. 339 of 2014 Protected Disclosures Act 2014 (Section 7(2)) Order 2014 available at <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>
- 4.6.3 A worker should make the disclosure to the prescribed person in line with whatever policy is implemented within the prescribed person's organisation.

4.7 How to Make an External Disclosure to the Minister for Public Expenditure and Reform

- 4.7.1 Workers are encouraged to raise their concerns under the internal disclosure procedure set out in section 4.5 in the first instance. However, it is recognised that this may not always be appropriate, so an OPW employee or former OPW employee **only** may make an external disclosure to the Minister for Public Expenditure & Reform (and

not to any other Minister or Minister of State), as s/he is the Minister of the Government responsible for the OPW.

- 4.7.2 When making a disclosure to the Minister for Public Expenditure & Reform, a worker should do so in writing, in line with the Protected Disclosures Policy of the Department of Public Expenditure and Reform. The worker should keep his or her own copy of the disclosure and any information provided with it.

4.8 How to Make an External Disclosure to a Legal Adviser

- 4.8.1 Workers are encouraged to raise their concerns under the internal disclosure procedure set out in section 4.5 in the first instance. However, it is recognised that this may not always be appropriate, so a worker may make an external disclosure in the course of obtaining legal advice (including advice relating to the operation of the Act) from a barrister, solicitor, trade union official or official of an excepted body.

- 4.8.2 Lawyers are precluded from gaining protection for disclosing information provided by clients while obtaining legal advice. It cannot be assumed that trade union officials are protected if they disclose information provided by their members while obtaining advice.

4.9 How to Make an External Disclosure in Other Cases

- 4.9.1 External disclosures in other cases, such as to the media, must meet higher standards in order to be protected. This is the most difficult type of disclosure for a worker to make, as unless **all** the following conditions (a) to (d) set out below are met, the disclosure **will not be protected**:

- (a) The worker must reasonably believe that the information disclosed, and any **allegations contained in it, are substantially true**
- (b) The disclosure **must not** be made for personal gain, financial or otherwise, except for statutory rewards
- (c) Given all the circumstances of the case, it is determined that it was reasonable for the worker to make the disclosure, based on the following:
 - i) The identity of the recipient;
 - ii) The seriousness of the alleged relevant wrongdoing;
 - iii) Whether the alleged relevant wrongdoing is continuing or is likely to occur in the future;
 - iv) Where a worker has previously made a disclosure of substantially the same information either internally or externally to either a prescribed person or to the Minister for Public Expenditure and Reform ((d) iii) refers), any action which the recipient of a previous disclosure has taken, or might reasonably be expected to have taken, as a result of the previous disclosure; and
 - v) Whether in previously making an internal disclosure of substantially the same information to the OPW, authorised third party or responsible other person, the worker complied with this Policy.
- (d) **at least one** of the following conditions (i) to (iv) are met, such that:
 - i) At the time the worker makes the disclosure, s/he reasonably believes that s/he will be penalised by his or her employer if s/he makes an internal

disclosure or an external disclosure to either a prescribed person or to the Minister for Public Expenditure and Reform

- ii) In a case where there is no relevant prescribed person to whom an external disclosure may be made, the worker reasonably believes that it is likely that evidence relating to the relevant wrongdoing will be concealed or destroyed if he or she makes an internal disclosure
- iii) The worker has previously made a disclosure of substantially the same information either internally or externally to either a prescribed person or to the Minister for Public Expenditure; and
- iv) The relevant wrongdoing is of an exceptionally serious nature.

4.9.2 Where an external disclosure is made in other cases, a worker should do so in writing and keep their own copy of the disclosure and any information provided with it.

5. WHAT PROTECTIONS ARE AVAILABLE FOR DISCLOSERS?

5.1 The Act sets out seven main protections for disclosers. The first three relate to employees and protect against unfair dismissal and other forms of penalisation that only apply to employees. The remaining four protections are available to workers, and the new right to sue is also available to third parties.

5.2 Unfair Dismissal Protection

Dismissing an employee for making a protected disclosure is an unfair dismissal. Apprentices, trainees and employees are protected from the start of their employment and need not have the minimum one year's service normally required. Employees above the normal retirement age are also protected, although they are normally excluded from unfair dismissals protection. Employees who are unfairly dismissed for making a protected disclosure are entitled to reinstatement to their job, re-engagement or compensation of up to five year's gross pay (Compensation for other unfair dismissals is only up to two year's gross pay.) Compensation may be reduced by up to 25% where a relevant wrongdoing was not the employee's motivation for making a disclosure.

5.3 Protection of Interim Relief Pending Determination of a Claim for Unfair Dismissal

An employee, trainee or apprentice who claims to have been unfairly dismissed for making a protected disclosure can apply to the Circuit Court for interim relief pending the determination or settlement of the unfair dismissal claim. This **must** be done within **21 days** after the date of dismissal. The Office should be given advance written notification of the intention to apply for interim relief. The Court will determine the application as soon as possible and must be satisfied that that the dismissal results wholly or mainly from the making of a protected disclosure.

5.4 Protection Against Penalisation

The Office cannot penalise or threaten penalisation against an employee for having made a protected disclosure, or allow anyone else to do so.

Penalisation is any act or omission that detrimentally affects a worker and in particular includes suspension, lay-off or 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 or harassment, discrimination, disadvantage, injury, damage, loss or threat of reprisal.

Penalisation of workers who make a disclosure will not be tolerated and workers who feel that they are being subjected to adverse treatment should report the matter immediately. Such notifications will be assessed/investigated and appropriate action will be taken where necessary.

If a complaint is made of penalisation contrary to the 2014 Act, then that complaint will be dealt with, having regard to the continued obligation to protect the identity of the discloser under the Act.

This protection cannot be used with the unfair dismissals protections set out above.

In general, where a protected disclosure is made during an investigation, disciplinary or other process, this should not affect those distinct processes, except where the investigation, disciplinary or other action represents, in essence, a form of penalisation for making a protected disclosure.

5.5 Right to Sue Protection

If a person causes loss, damage, disadvantage or injury to a worker or a third party because s/he made a protected disclosure, the victim may sue the person on causing it. A victim may not both sue a person about a particular matter, and also make an unfair dismissal claim or a complaint against penalisation as set above against the same person about the same matter.

5.6 Protection from Being Sued

Workers who make a protected disclosure cannot be sued and will have qualified privilege under the Defamation Acts. Defamation is stating something that tends to injure a person's reputation in the eyes of reasonable members of society, either verbally (slander), or in writing/broadcasting (libel). Qualified privilege is lost if it is proved that the worker acted with malice.

5.7 Protection from Prosecution

A worker cannot be prosecuted for the disclosure of information where this is restricted or prohibited, if the disclosure was, or was reasonably believed by the person to be, a protected disclosure.

5.8 Protection of Discloser's Identity

A recipient to whom a protected disclosure is made or referred must take all reasonable steps to avoid disclosing information that might identify the person who has made the protected disclosure. The discloser will be consulted with and, where possible, their informed consent will be gained, prior to any action being taken that could identify them. However, this protection is not absolute and the discloser's identity could be revealed where:

- i) the recipient shows that he or she took all reasonable steps to avoid disclosing any such information.
 - ii) the recipient reasonably believes that the person making the disclosure does not object.
 - iii) the recipient reasonably believes that disclosing any such information is necessary for the:
 - (a) effective investigation of the wrongdoing concerned
 - (b) prevention of serious risk to the security of the State, public health, public safety or the environment, or
 - (c) prevention of crime, or
 - (d) prosecution of a criminal offence.
- or
- iv) the disclosure is otherwise necessary in the public interest or is required by law.

Workers who are concerned that their identity is not being protected should notify the person investigating their disclosure. Such notifications will be assessed / investigated in accordance with review procedures and appropriate action will be taken where necessary.

If a recipient fails to comply with these confidentiality requirements, the discloser can sue the recipient personally if he or she suffers any adverse consequences.

6. RECEIVING AND ASSESSING AN INTERNAL DISCLOSURE

- 6.1** All reported disclosures about perceived wrongdoing in the workplace must be treated seriously and confidentially.
- 6.2** Refer the discloser to the Policy to ensure they are aware of internal disclosure procedure.
- 6.3** While a disclosure may be made verbally, encourage the discloser to make the disclosure in writing, using the OPWPD01 form. If the discloser is unwilling or unable to do so, or is making a disclosure over the phone, record the disclosure on the OPWPD01 form. It is important to document all steps throughout the process.
- 6.4** As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Act and all disclosures are presumed to be protected, until proved otherwise, the recipient should keep a complete written record of their actions, including time lines.
- 6.5** Ascertain if the discloser wishes to protect his or her identity and ensure that this is indicated on the form OPWPD01.
- 6.6** Take all reasonable steps to protect the identity of the discloser, unless there is a reasonable belief that revealing this is necessary to effectively investigate the wrongdoing disclosed; to prevent crime or serious risk to State security, public health, public safety or the environment; to prosecute a criminal offence; in the public interest or if required by law. The recipient can be personally sued by the discloser for any loss arising from revealing the discloser's identity outside of these circumstances.
- 6.7** If it becomes necessary to reveal the discloser's identity for any of these reasons, inform the discloser in advance, except in exceptional cases. The discloser may request a review of this decision and a review should be carried out, where practicable before and such disclosure of information is made.
- 6.8** Ensure that the wrongdoing being alleged is relevant, i.e. that it meets criteria as set out in section 2.4. If it is not, the disclosure will not be protected. In this case, if the discloser wishes to proceed with the disclosure, bring this to their attention.
- 6.9** Ascertain if the wrongdoing has occurred in the past or if it is continuing to occur or is likely to occur in the future.
- 6.10** Clarify the basis of the concerns raised with the discloser, particularly anything which is unclear or not immediately obvious.
- 6.11** If the disclosure is really a personal complaint or grievance, refer the discloser to the appropriate procedure (see 1.4) and do not proceed any further with the matter as a protected disclosure. In some cases, a personal grievance may be deeply and inextricably intertwined with the concern raised or it may be the discloser's primary motivation. As the worker's motivation for disclosing the matter is irrelevant, proceed with this as a protected disclosure.

- 6.12** Assess whether the disclosure is based on the discloser's reasonable belief or is a deliberately false report. If the disclosure is deliberately false, inform Personnel and Development Services who will decide what disciplinary action will be taken.
- 6.13** Not all disclosures may merit a full blown investigation. Examples may be where the discloser does not have all the relevant facts or where a misunderstanding has arisen. It is important to ensure that the evaluation of the case is sufficiently robust to explain the basis of any decision to the discloser.
- 6.14** Equally, where the discloser does not have hard evidence of wrongdoing but has a reasonable belief in their concern, a disclosure should proceed to an investigation which may uncover evidence of wrongdoing.

7. INTERNAL DISCLOSURE INVESTIGATION AND OUTCOME

- 7.1** Where the recipient decides that an investigation is required, this should be initiated with immediate effect. The recipient may decide to refer a disclosure for investigation to specialist or other units within OPW, for example:
- Internal Audit Unit
 - Equality Unit
 - Policy Unit
 - Health and Safety Unit
 - Personnel and Development Services
- The recipient may also refer the investigation to a specialist workplace investigator or to a relevant external agency, 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 of investigation of particular matters.
- 7.2** All investigations should be carried out in a confidential and fair manner and in accordance with the principles of natural justice.
- 7.3** Take all reasonable steps to protect the identity of those against whom allegations are made and of the discloser, unless there is a reasonable belief that revealing the discloser's identity is necessary to effectively investigate the wrongdoing disclosed; to prevent crime or serious risk to State security, public health, public safety or the environment; to prosecute a criminal offence; in the public interest or if required by law.
- 7.4** If it becomes necessary during the investigation to reveal the discloser's identity for any of these reasons, inform the discloser in advance, except in exceptional cases. The discloser may request a review of this decision and a review should be carried out, where practicable before and such disclosure of information is made.
- 7.5** The discloser should be advised of the progress and, in particular, of the outcome of the investigation. Sometimes the need for confidentiality may prevent disclosers from being given specific details of the investigation and/or any disciplinary action taken. Disclosers should treat any material they are given about the investigation as confidential.
- 7.6** There is a difference between a confidential disclosure, where the discloser's identity is known but is not revealed and an anonymous disclosure, where the discloser's identity is unknown.

- 7.7** Where an anonymous disclosure is received, it may be very difficult to investigate the wrongdoing it reveals, as it will not be possible to obtain further information from the discloser on the alleged wrongdoing. It will also be impossible to keep the discloser informed on the progress or outcome of the investigation.
- 7.8** Without affecting the quality of the investigation, all reasonable effort should be made to bring any investigation arising from a disclosure to a conclusion as speedily as possible.

8. REVIEW OF DECISIONS

- 8.1** In the event that the discloser is not satisfied with:
- a) the decision made to disclose the identity of the discloser
 - b) the outcome of an investigation undertaken in respect of the disclosure
 - c) the outcome of an investigation in respect of any complaint of penalisation
- the discloser can submit a request for review to the Chairman, outlining that the matter has been already addressed by the Director of Corporate Services (and anyone to whom he or she reports it) and outline the reasons why they feel that it requires further attention. The Chairman will undertake an independent evaluation following the procedures outlined in sections 4, 6 and 7 above. A decision of the Chairman will be final. Where the disclosure has been made to the Chairman in the first instance, the discloser may request the Chairman to appoint an external third party to review the decision, outlining the reasons why he or she feels that it requires further attention. The appointed third party will undertake an independent evaluation following the procedures outlined in sections 4, 6 and 7 above. A decision of the appointed third party will be final.

9. RECORDS

- 9.1** It is not possible to know at the time of a disclosure whether it will subsequently be deemed protected under the 2014 Act. Written records, including timelines, in relation to any assessment and/or investigation undertaken should be maintained. These records may need to be used in a subsequent disciplinary process if an investigation comes to the conclusion that some form of wrongdoing has occurred.
- 9.2** These records will be maintained for a minimum of five years after the closure of the case and will be stored in a confidential and secured environment.
- 9.3** A report on all protected disclosures in the immediately preceding year will be published on the OPW website not later than 30 June in each year and will be included in the OPW Annual Report. This report should not identify any of the parties involved, but should set out:
- (a) the number of protected disclosures made to OPW,
 - (b) the action (if any) taken in response to these protected disclosures, and
 - (c) any other information relating to those protected disclosures and the action taken as may be requested by the Minister for Public Expenditure and Reform from time to time.

10. REVIEW OF POLICY

The Policy may be revoked, replaced or amended at any time. It will be reviewed to incorporate the guidance provided by the Minister for Public Expenditure and Reform, as outlined in Section 21 of the Act.

Appendix 1: Recipient Contact Details

Protected Disclosures Officer/ Director of Corporate Services	Eilís O'Connell Fón: 046 942 6100 0761 106 100 Fón Póca: 086 025 6867 Facs: 046 943 8423 protected.disclosures@opw.ie <u>úsáid an téacs</u> <u>"Nochtadh Cosanta" mar thagairt sa ríomhphost</u>
Chairman	Maurice Buckley Fón: 01 647 6135 0761 106 135 Facs: 046 943 8530 chairman@opw.ie <u>úsáid an téacs "Nochtadh</u> <u>Cosanta" mar thagairt sa ríomhphost</u>



Beartas maidir le Nochtadh Cosanta

Luil 2017

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1. RÉAMHRÁ

- 1.3** Is éard is cuspóir leis an Acht um Nochtadh Cosanta, 2014 (“an tAcht”) ná cultúr a chur chun cinn agus a spreagadh san áit oibre ina bhfuil fiúntas le hábhair inní a tharraingt ar aird maidir le héagóracha a d’fhéadfadh a bheith ag tarlú san áit oibre, agus ina nglactar gníomh cuí mar fhreagra ar nochtuithe den sórt sin. Leis an Acht, cuirtear ar chumas oibrithe inní a léiriú maidir le héagóracha a d’fhéadfadh a bheith ar siúl san áit oibre, agus fios acu go bhfuil cosaint acu san áit oibre in aghaidh beart díoltais ina n-aghaidh féin. Éilítear ar gach comhlacht poiblí nósanna imeachta inmheánacha a bheith acu chun déileáil le nochtuithe cosanta agus iad sin a chur ar fáil i scríbhinn d’oibrithe. Tháinig éifeacht leis an Acht an 15 Iúil 2014.
- 1.4** Tá Oifig na nOibreacha Poiblí (OOP) meáite ar thimpeallacht chuí a chothú le haghaidh a thabhairt ar ábhair inní a bhaineann le héagóracha a d’fhéadfadh a bheith ag tarlú san áit oibre agus ar an tacaíocht is gá a chur ar fáil d’oibrithe a léiríonn fíor-ábhair inní.
- 1.3** Leis an mBeartas seo, léirítear na prionsabail maidir le nochtuithe cosanta laistigh den OOP agus na nósanna imeachta le déileáil leis na nochtuithe sin.
- 1.4** Ní chlúdaítear gearáin phearsanta ná hábhair chasaoide phearsanta leis an mBeartas seo. Ba chóir leanúint leis na Nósanna Imeachta maidir le Gearáin faoi Chiorclán 11/2001 agus An Cód Cleachtas maidir le Nósanna Imeachta do Ghearáin, 2009 de chuid na Comhchomhairle Tionscail um Fhostaithe Tionsclaíocha Stáit a úsáid chun déileáil le gearáin san áit oibre.
- 1.5** Ní chlúdaítear nochtadh leis an mBeartas seo ina dtugann oibrí faisnéis bhréagach, mhíthreorach, bhaoth nó chráiteach go feasach. Má tharlaíonn sé go ndéanann oibrí nochtadh, agus go bhfuil a fhios acu go bhfuil sé bréagach nó nach gcreideann siad go bhfuil sé fíor, ansin ní bheidh cosaint ag an nochtadh sin faoi Acht 2014 agus rachaidh an OOP ansin i mbun gnímh smachta nó eile a bheidh cuí. Sa bhreis air sin, ach a ndéantar éagóir a nochtadh, ní gá go mbronnfaí aon chosaint nó díolúine ar oibrí i ndáil le haon rannpháirtíocht a d’fhéadfadh a bheith aige/aici san éagóir sin.
- 1.6** Tá sé mar aidhm leis an mBeartas seo éifeacht a thabhairt do cheanglais agus forálacha an Achta agus ní thagann sé in áit aon cheanglais thuairiscithe ná nochtadh dhlíthiúla eile a thagann chun cinn faoi reachtaíocht eile. Ní mór nósanna imeachta nó ceanglais thuairiscithe reachtúla a chomhlíonadh go hiomlán nuair atá siad ann.
- 1.7** Cuirfidh an OOP na prionsabail seo a leanas i bhfeidhm i gcás go dtugtar saincheist ar aird faoin Acht:
- (h) Spreagfar oibrithe san OOP inní réasúnta a léiriú maidir le héagóracha a d’fhéadfadh a bheith ag tarlú san áit oibre ionas go bhféadfar aghaidh a thabhairt ar an inní sin.
 - (i) Níor chóir go mbeadh ar oibrithe na cosaintí faoin Acht a lorg mar go ndéileálfar le gach nochtadh éagóracha san áit oibre, sa ghnáthchúrsa, go dáiríre agus déanfar iad a imscrúdú go cuí.
 - (j) Déanfar timpeallacht oibre a chothú ina ndíreofar ar freagairt don *teachtaireacht* agus ní ar an *teachtaire*.
 - (k) Tá tacaíocht ar fáil tríd an gClár Cúnaimh d’Fhostaithe d’oibrithe a dhéanann nochtuithe maidir le héagóracha a d’fhéadfadh a bheith ann.
 - (l) Cinnteoidh an OOP go ndéanfar tuairiscí maidir le héagóracha a mheasúnú agus a imscrúdú go hinniúil agus go tráthúil agus go leanfaidh an freagra cuí nuair is gá sin. Cuirfear in iúl don nochtóir conas mar a tugadh aghaidh ar an tsaincheist, lena n-áirítear toradh aon imscrúdaithe.

(m) Ní bheidh oibríthe a dhéanann nochtuithe cosanta faoi mhíbhuntáiste ar aon slí as nochtadh a dhéanamh, fiú mura ndéantar éagóir a shaináithint, ar an gcoinníoll gur léiríodh imní bunaithe ar ábhar réasúnta. Beidh bearta díoltais in aghaidh duine a dhéanann nochtadh faoin mBeartas seo faoi réir ag gníomh smachta.

(n) Glacfaidh an OOP gach céim réasúnach chun déileáil le nochtuithe a dhéantar faoin mBeartas seo ar shlí rúnda agus íogair. Ní thabharfaidh an OOP aitheantas an nóchtóra le fios gan a dtoilliú, mura n-éilítear sin faoin dlí nó más gá ar mhaithe leis an éagóir ábhartha a imscrúdú go héifeachtach.

3. CAD IS NOCHTADH COSANTA ANN?

2.1 Sainmhínítear '**nochtadh cosanta**' san Acht mar nochtadh faisnéise a chreideann oibrí go réasúnach go léiríonn sé *éagóir ábhartha* amháin nó níos mó. Ní mór go dtiocfadh an fhaisnéis ar aird an oibrí i gceangal lena chuid nó lena cuid fostaíochta. Mar shampla, ní bheidh nochtadh faoi chosaint má bhaineann sé le cúrsaí i saol pearsanta duine lasmuigh den áit oibre agus gan cheangal leis an áit oibre. Ní mór nochtadh a dhéanamh mar atá forordaithe san Acht (agus mar a leagtar amach i gCuid 4 den Bheartas seo). Tá an chúis le nochtadh a bheith á dhéanamh ag oibrí neamhábhartha.

2.2 Nuair a dhéantar nochtadh maidir le héagóir, ní féidir fios a bheith ann an ndéanfar éileamh ar chosaint nó an seasfar le héileamh den sórt sin. Ar an dóigh chéanna, b'fhéidir nach léireodh oibrí go bhfeiceann sé nó sí go bhfuil a nochtadh cosanta. Mar thoradh air sin, toimhdeofar go mbeidh gach nochtadh ina nochtadh cosanta faoin Acht, mura gcruthófar a mhalairt.

2.3 Is '**nochtóir**' é an t-oibrí a dhéanann nochtadh. Is '**faighteoir**' é an duine a fhaigheann nochtadh (go díreach nó trí tharchur).

2.4 Is ionann '**éagóracha ábhartha**' mar a shainítear iad san Acht. Is éagóracha ábhartha iad na hocht n-ábhar seo a leanas:

- (i) Cion coiriúil a dhéanamh
- (j) Gan cloí le haon cheanglas dlíthiúil, seachas iad sin a thagann chun cinn faoi chonarthaí fostaíochta nó le haghaidh seirbhísí
- (k) Iomrall ceartais
- (l) Contúirt maidir le sláinte nó sábháilteacht duine ar bith
- (m) Damáiste don chomhshaol
- (n) Úsáid neamhdhleathach nó úsáid mhícheart eile a bhaint as cistí nó acmhainní OOP, nó airgead poiblí eile
- (o) Gníomh nó neamhghníomh ag an OOP nó thar ceann an OOP atá leatromach, idirdhealaitheach nó mórfhaillíoch nó arb ionann é agus mór-míbhainistíocht
- (p) Ceilt nó scriosadh faisnéise maidir le haon cheann de (a) go (g) thuas.

D'fhéadfadh gur tharla siad sin roimhe seo, go bhfuil siad fós ag tarlú nó gur dócha go dtarlóidh siad amach anseo. Tá suíomh éagóra ábhartha neamhthábhachtach agus is féidir leis a bheith áit ar bith ar domhan. Is cuma ach oiread má tá nó nach bhfuil feidhm le dlí na hÉireann.

2.5 Sa chás gurb é feidhm an oibrí é, nó feidhm fhóistóir an oibrí é, ábhar a bhrath, a imscrúdú nó a ionchúiseamh nach mbaineann gníomh nó neamhghníomh an fhóistóra leis, ansin **ní** éagóir ábhartha atá ann agus **níl** an nochtadh cosanta.

2.6 Níl nochtadh ina n-éilítear pribhléid ghairmiúil dhlíodóra, cosanta má dhéanann duine é a fuair é agus an duine sin i mbun comhairle dlí a thabhairt.

4. CÉ LEIS A MBAINNEANN AN BEARTAS SEO?

Baineann an beartas seo le hoibrithe san OOP arna sainiú mar seo a leanas:

- g) fostaithe lánaimseartha agus páirtaimseartha uile de chuid an OOP;
- h) iar-fhostaithe de chuid an OOP (sa chás nach gcáilíonn siad do chosaint fhostóra eile);
- i) céimithe agus printísigh ar shocrúchán leis an OOP;
- j) conraitheoirí, comhairleoirí, daoine féinfhostaithe ag gníomhú thar ceann an OOP;
- k) oibrithe cuideachtaí a chuireann earraí agus seirbhísí ar fáil don OOP;
- l) oibrithe deonacha a bhíonn ag obair leis an OOP.

Beidh feidhm leis na cosaintí faoin Acht a mbíonn feidhm leo ag fostaithe de bhua a bhfostaíochta ag oibrithe agus iad sin amháin ag (a) go (e) thuas. Ní bheidh na cosaintí faoin Acht ag oibrithe deonacha a mbíonn feidhm leo ag fostaithe de bhua a bhfostaíochta agus iad sin amháin.

4. AN TSLÍ LE NOCHTADH A DHÉANAMH

4.1 Ba chóir d'oibrí nochtadh a dhéanamh má tá barúil réasúnach acu gur tharla éagóir ábhartha, go bhfuil éagóir ábhartha ag tarlú nó gur dócha go dtarlóidh éagóir ábhartha nó gur sáraíodh treoir OOP nó státseirbhíse is go bhféadfaí díobháil a dhéanamh do dhaoine eile nó don OOP.

4.2 Foráiltear sa reachtaíocht do cúig bhealach le nochtadh a dhéanamh:

- (f) Nochtadh inmheánach le Stiúirthóir na Seirbhísí Corparáideacha nó leis an gCathaoirleach. Féach alt 4.5 le haghaidh treoracha maidir le nochtadh inmheánach a dhéanamh.
- (g) Nochtadh seachtrach le duine forordaithe (arna liostú i Sceideal 3 den Acht) agus IR Uimh. 339 de 2014 Ordú 2014 an tAcht um Nochtadh Cosanta 2014 (Alt 7(2)). Féach alt 4.6 le haghaidh treoracha maidir le nochtadh seachtrach a dhéanamh le duine forordaithe.
- (h) Nochtadh seachtrach leis an Aire Caiteachais Phoiblí agus Athchóirithe. Féach alt 4.7 le haghaidh treoracha maidir le nochtadh seachtrach a dhéanamh leis an Aire.
- (i) Nochtadh seachtrach le comhairleoir dlí, lena n-áirítear abhcóide, aturnae nó oifigeach ceardchumainn. Féach alt 4.8 le haghaidh treoracha.
- (j) Nochtadh seachtrach i gcásanna eile. Féach alt 4.9 le haghaidh treoracha.

4.3 Cé gur féidir nochtadh (i scríbhinn is dócha) a dhéanamh gan ainm, ba chóir a thabhairt ar aird, go bhfuil srian mór ar a mhéad is a fhéadfar an éagóir nochtaithe a imscrúdú i gcásanna mar sin, mar nach bhféadfar leanúint suas leis an nochtóir má bhíonn tuilleadh faisnéise nó soiléirithe ag teastáil nó le comhairle a chur ar an nochtóir maidir leis an tslí a ndeachthas i ngleic leis an tsaincheist, lena n-áirítear toradh aon imscrúdaithe. Ní féidir le hoibrí cúiteamh a fháil faoi Acht 2014 mura gcéannódh sé/sí é/í féin.

4.4 Níor chóir d'oibrí a bhfuil sé de rún acu nochtadh a dhéanamh dul i mbun imscrúdaithe lasmuigh de ghnáthraon a ndualgas d'fhonn aon éagóir mheabhairbhraite a dheimhniú.

4.5 An tSlí le Nochtadh Inmheánach a Dhéanamh

4.5.1 Tá sonraí teagmhála faighteoirí Nochtuithe Cosanta go himmheánach san OOP in Aguisín 1.

- 4.5.2 Ba chóir d'oibrí ar mian leis nó léi nochtadh i scríbhinn a dhéanamh foirm OPWPD01 a úsáid. Ba chóir don oibrí a chóip nó a cóip féin den fhoirm nochtadh agus aon fhaisnéis a ghabhann leis an bhfoirm a choinneáil.
- 4.5.3 Féadfaidh oibrí a bhfuil ábhar imní aige nó aici nochtadh inmheánach a dhéanamh ó bhéal nó i scríbhinn más féidir, go díreach le Stiúrthóirí na Seirbhísí Corparáideacha. Sa chás go ndéantar nochtadh ó bhéal, tá sé ríthábhachtach go ndéanann an faighteoir é a dhoiciméadú go hiomlán ag úsáid foirm OPWPD01.
- 4.5.4 Má chreideann oibrí go réasúnach go bhfuil cúinsí á chosc nó á cosc óna gcuid imní a thuairisciú le Stiúrthóir na Seirbhísí Corparáideacha, ba chóir don oibrí ansin an nochtadh a dhéanamh leis an gCathaoirleach. Agus an t-oibrí á dhéanamh sin, ba chóir dó nó di na cúinsí a leagan amach a bhfuil an nochtadh á chosc óna dhéanamh le Stiúrthóir na Seirbhísí Corparáideacha ar an gcéad dul síos.
- 4.5.5 Sa chás go gcreideann oibrí go réasúnach go mbaineann an éagóir atá á tuairisciú acu go príomha le ceachtar díobh seo a leanas:
- iompar duine seachas a bhfostóra nó
 - rud éigin a bhfuil duine eile seachas a bhfostóra freagrach go dlíthiúil as
- ba chóir nochtadh a dhéanamh ansin leis an duine eile sin agus breithnítear leis an Acht gur nochtadh inmheánach leis an OOP é.
- 4.5.6 Féadfaidh an OOP tríú páirtithe sainiúla a cheapadh (ní fostaithe ag an OOP) le gníomhú mar fhaighteoirí nochtuithe cosanta. Sa chás go ndéanann oibrí nochtadh le faighteoir ar tríú páirtí den sórt sin iad, féachfar air sin mar nochtadh inmheánach á dhéanamh ag an oibrí laistigh den OOP.

4.6 An tSlí le Nochtadh Seachtrach a Dhéanamh le Duine Forordaithe

- 4.6.1 Spreagtar oibríthe a n-ímní a léiriú faoin nós imeachta do nochtadh inmheánach arna leagan amach in alt 4.5 ar an gcéad dul síos. Ach, aithnítear nach bhfuil sé sin cuí i gcónaí, dá bhrí sin féadfaidh oibrí nochtadh seachtrach a dhéanamh le duine forordaithe i gcúinsí ina gcreideann sé nó sí go réasúnach:
- (i) Go bhfuil an fhaisnéis atá á nochtadh, agus aon **líomhaintí ann, fíor go substaintiúil**, agus
 - (ii) Go dtagann an éagóir ábhartha laistigh de réimse freagrachta an duine forordaithe.

4.6.2 Is féidir teacht ar liosta iomlán na *ndaoine forordaithe* i Sceideal 3 den Acht agus IR Uimh. 339 de 2014 Ordú 2014 den Acht um Nochtadh Cosanta 2014 (Alt 7(2)) ar fáil ag <http://www.irishstatutebook.ie/eli/2014/si/339/made/en/print>.

- 4.6.3 Ba chóir d'oibrí an nochtadh a dhéanamh leis an duine forordaithe ag teacht le cibé beartas a chuirtear i bhfeidhm laistigh d'eagraíocht an dhuine forordaithe.

4.7 An tSlí le Nochtadh Seachtrach a Dhéanamh leis an Aire Caiteachais Phoiblí agus Athchóirithe

- 4.7.1 Spreagtar oibríthe a n-ímní a léiriú faoin nós imeachta do nochtadh inmheánach arna leagan amach in alt 4.5 ar an gcéad dul síos. Ach, aithnítear nach bhfuil sé sin cuí i gcónaí, dá bhrí sin is fostaí OOP nó iar-fhostaí OOP agus **sin amháin** ar féidir leis nó léi nochtadh seachtrach a dhéanamh leis an Aire Caiteachais Phoiblí agus Athchóirithe (agus ní le haon Aire ná Aire Stáit eile), ós rud é gurb eisean/ise an tAire Rialtais atá freagrach as an OOP.
- 4.7.2 Agus nochtadh á dhéanamh ag oibrí leis an Aire Caiteachais Phoiblí agus Athchóirithe, ba chóir dó nó di é sin a dhéanamh i scríbhinn, ag teacht le Beartas Nochtuithe Cosanta na

Roinne Caiteachais Phoiblí agus Athchóirithe. Ba chóir don oibrí a chóip nó a cóip féin den nochtadh agus aon fhaisnéis a ghabhann leis a choinneáil.

4.8 An tSlí le Nochtadh Seachtrach a Dhéanamh le Comhairleoir Dlí

- 4.8.1 Spreagtar oibrithe a n-ímní a léiriú faoin nós imeachta do nochtadh inmheánach arna leagan amach in alt 4.5 ar an gcéad dul síos. Ach, aithnítear nach bhfuil sé sin cuí i gcónaí, dá bhrí sin féadfaidh oibrí nochtadh seachtrach a dhéanamh le linn dó nó di comhairle dlí a fháil (lena n-áirítear comhairle maidir le feidhmiú an Achta) ó abhcóide, aturnae, ó oifigeach ceardchumainn nó oifigeach de chomhlacht inghlactha.
- 4.8.2 Tá cosc ar dhlíodóirí cosaint a fháil as fhaisnéis ó chliant a bhíonn ag fáil comhairle dlí a nochtadh. Ní fhéadfar glacadh leis go bhfuil oifigigh ceardchumainn cosanta má nochtann siad faisnéis a fhaigheann siad óna mball agus iadsan ag fáil comhairle.

4.9 An tSlí le Nochtadh Seachtrach a Dhéanamh i gCásanna Eile

- 4.9.1 Ní mór do nochtuithe seachtracha i gcásanna eile, mar shampla leis na meáin, caighdeán níos airde a bhaint amach ionas go gcosnófar iad. Is é sin an nochtadh is deacra ag oibrí le déanamh, mar **nach gcosnófar** an nochtadh mura gcomhlíonfar na coinníollacha seo a leanas **uile** (a) go (d) arna leagan amach thíos:
- (a) Ní mór go gcreidfeadh an t-oibrí go réasúnach go bhfuil an fhaisnéis atá á nochtadh, agus aon **líomhaintí ann, fíor go substaintiúil**
 - (b) **Ní fhéadfar** an nochtadh a dhéanamh ar mhaithe le tairbhe phearsanta, airgid nó eile, seachas luaíochtaí reachtúla
 - (c) Go gcinntear, agus cúinsí uile an cháis ar eolas, go raibh sé réasúnach ag an oibrí an nochtadh a dhéanamh, bunaithe ar na nithe seo a leanas:
 - i) Céannacht an fhaighteora;
 - ii) Tromchúiseacht na héagóra ábhartha líomhnaithe;
 - iii) Cibé an bhfuil an éagóir ábhartha líomhnaithe fós ar siúl nó gur dócha go dtarlóidh sé amach anseo;
 - iv) Sa chás go bhfuil nochtadh déanta ag oibre roimhe seo den fhaisnéis chéanna go substaintiúil go himmheánach nó go seachtrach le duine forordaithe nó leis an Aire Caiteachais Phoiblí agus Athchóirithe ((d) iii) tagraíonn), aon ghníomh a ndeachaigh faighteoir nochtadh roimhe seo ina bhun, nó a d'fhéadfaí a bheith ag súil go réasúnach go ndeachaigh ina bhun, mar thoradh ar an nochtadh roimhe sin; agus
 - v) Cibé, agus nochtadh inmheánach á dhéanamh den fhaisnéis chéanna go substaintiúil leis an OOP, le tríú páirtí nó duine freagrach eile údaraithe, ar chomhlíon an t-oibrí an Beartas seo.
 - (d) go gcomhlíontar **ceann amháin ar a laghad** de na coinníollacha seo a leanas (i) go (iv), ionas;
 - i) Go gcreideann an t-oibrí go réasúnach ag an tráth a dhéanann sé nó sí an nochtadh go ngearrfaidh an fostóir pionós air nó uirthi má dhéanann sé nó sí nochtadh inmheánach nó nochtadh seachtrach le duine forordaithe nó leis an Aire Caiteachais Phoiblí agus Athchóirithe
 - ii) I gcás nach bhfuil aon duine forordaithe ábhartha ann a bhféadfar nochtadh seachtrach a dhéanamh leis nó léi, go gcreideann an t-oibrí go réasúnach gur dócha

go ndéanfar fianaise a bhaineann leis an éagóir ábhartha a cheilt nó a scriosadh má dhéanann sé nó sí nochtadh inmheánach

- iii) Go ndearna an t-oibrí nochtadh roimhe seo den fhaisnéis chéanna go substaintiúil go himmheánach nó go seachtrach le duine forordaithe nó leis an Aire Caiteachais Phoiblí; agus
- iv) Gur de mhianach fíor-thromchúiseach amach is amach é an éagóir ábhartha.

4.9.2 Sa chás go ndéantar nochtadh seachtrach i gcásanna eile, ba chóir d'oibrí é sin a dhéanamh i scríbhinn agus a gcóip féin den nochtadh agus aon fhaisnéis a ghabhann leis a choinneáil.

5. CAD IAD NA COSAINTÍ ATÁ AR FÁIL DO NOCHTÓIRÍ?

5.1 Leagtar amach seacht gcinn de phríomhchosaintí do nochtóirí san Acht. Baineann na chéad trí cinn le fostaithe agus cosnaíonn siad in aghaidh dífhostú éagórach agus cineálacha eile pionóis a bhaineann le fostaithe agus iad sin amháin. Tá na ceithre cinn eile de chosaintí ar fáil d'oibrithe, agus tá an ceart nua agartha ar fáil freisin do thríú páirtithe.

5.2 Cosaint in aghaidh Dífhostú Éagórach

Is dífhostú éagórach atá i gceist le fostaí a dhífhostú as nochtadh cosanta a dhéanamh. Tá printísigh, daoine faoi oiliúint agus fostaithe cosanta ó thús a bhfostaíochta agus ní gá dóibh an bhliain amháin seirbhíse ar a laghad a éilítear de ghnáth a bheith curtha isteach acu. Tá fostaithe atá níos sine ná an ghnáthaois scoir cosanta chomh maith, cé go mbíonn siad eisiata de ghnáth ó chosaint ó dhífhostú éagórach. Tá fostaithe a dhéantar a dhífhostú go héagórach as nochtadh cosanta a dhéanamh i dteideal athréimnithe ina bpost, athfhostú nó cúiteamh suas le cúig bliana ollphá (is suas le dhá bhliain ollphá a bhíonn i gceist le cúiteamh i gcásanna eile de dhífhostú éagórach.) Féadfar cúiteamh a laghdú de réir suas le 25% sa chás nárbh éagóir ábhartha ba chúis leis an bhfostaí nochtadh a dhéanamh.

5.3 Cosaint ar Fhaoiseamh Eatramhach go dtí go go gCinnfear Éileamh maidir le Dífhostú Éagórach

Féadfaidh fostaí, duine faoi oiliúint nó printíseach a dhéanann éileamh go ndearnadh é nó í a dhífhostú go héagórach as nochtadh cosanta a dhéanamh iarratas a dhéanamh chuig an gCuairt Chuarda ar fhaoiseamh eatramhach go dtí go gcinnefar nó go réiteofar an t-éileamh maidir le dífhostú éagórach. **Ní mór** é sin a dhéanamh laistigh de **21 lá** i ndiaidh dáta an dífhostaithe. Ba chóir réamhfhógra i scríbhinn a thabhairt don Oifig maidir leis an rún iarratas a dhéanamh ar fhaoiseamh eatramhach. Cinnfidh an Chúirt an t-iarratas chomh luath agus is féidir agus ní mór don Chúirt a bheith sásta gur de thoradh, go hiomlán nó go príomha, nochtadh cosanta a dhéanamh a tharla an dífhostú.

5.4 Cosaint in aghaidh Pionóis

Ní fhéadfaidh an Oifig pionós a ghearradh nó a bhagairt ar fhostaí as nochtadh cosanta a dhéanamh, ná ligean d'aon duine eile é sin a dhéanamh. Is ionann pionós a ghearradh agus aon ghníomh nó neamhghníomh a mbíonn tionchar díobhálach aige ar oibrí agus áirítear ach go háirithe fionraíocht, cailliúint poist nó dífhostú, ísliú céime, deis a chailliúint le haghaidh ardú céime, dualgais a aistriú, suíomh na háite oibre a athrú, pá a laghdú, uaireanta oibre a athrú, aon ghníomh smachta, iomardaithe nó aon phionós eile a ghearradh nó a riaradh (lena n-áirítear pionós airgeadais), caitheamh go héagórach, comhéigean, imeaglú nó cluicheadh, idirdhealú, míbhuntáiste, díobháil, damáiste, cailliúint nó bagairt go ndéanfaí beart díoltais.

Níl sé inghlactha go ngearrafaí pionós ar oibrithe a dhéanann nochtuithe agus ba chóir d'oibrithe a mhothaíonn go bhfuiltear ag caitheamh go dona leo an t-ábhar imní sin a thuairisciú láithreach. Déanfar aon nithe mar sin a thabharfar ar aird a mheasúnú/a imscrúdú agus tabharfar faoin ngníomh cuí nuair is cuí.

Má dhéantar gearán maidir le pionós a sháraíonn Acht 2014, ansin déileálfar leis an ngearán sin, le haird ar an dualgas leanúnach go ndéanfaí céannacht an nochtóra a chosaint faoin Acht. Ní fhéadfar an chosaint sin a úsáid leis na cosaintí maidir le dífhostú éagórach a leagtar amach thuas. Go ginearálta, i gcás go ndéantar nochtadh cosanta le linn imscrúdaithe, próisis smachta nó eile, níor chóir go mbeadh aon tionchar aige sin ar na próisis ar leith sin, ach amháin nuair a léiríonn an t-imscrúdú sin, an próiseas smachta sin nó aon ghníomh eile, go bunúsach, cineál pionóis mar thoradh ar nochtadh cosanta a dhéanamh.

5.5 Cosaint maidir le Ceart Agartha

Má bhíonn duine ina chúis le caillteanas, damáiste, míbhuntáiste nó díobháil d'oibrí nó do thríú páirtí mar gheall go ndearna sé nó sí nochtadh cosanta, féadfaidh an t-íospartach an duine is cúis leis a agairt. Ní fhéadfaidh íospartach duine a agairt maidir le hábhar ar leith, agus éileamh a dhéanamh freisin maidir le dífhostú éagórach ná gearán a dhéanamh in aghaidh pionóis mar a leagtar amach thuas in aghaidh an duine céanna maidir leis an ábhar céanna.

5.6 Cosaint ó Agairt

Ní fhéadfar oibríthe a dhéanann nochtadh cosanta a agairt agus beidh pribhléid shrianta acu faoi na hAchtanna um Chlúmhilleadh. Is ionann clúmhilleadh agus ábhar ar dócha go ndéanfadh sé díobháil do chluí duine i súile daoine réasúnta sa tsochaí a lua, bíodh sin ó bhéal (béadchaint), nó i scríbhinn / á chraoladh (leabhal). Cailltear pribhléid shrianta má chruthaítear gur ghníomhaigh an t-oibrí le mailís.

5.7 Cosaint ó Ionchúiseamh

Ní fhéadfar oibrí a ionchúiseamh as faisnéis a nochtadh sa chás go bhfuil sé sin srianta nó coiscithe, más rud é gur nochtadh cosanta, nó gur chreid an duine go réasúnach gur nochtadh cosanta a bhí ann.

5.8 Cosaint maidir le Céannacht Nochtóra

Ní mór d'fhaighteoir a ndéantar nochtadh cosanta leis nó a dtarchuirtear nochtadh cosanta chuige gach céim réasúnach a ghlacadh le nochtadh faisnéise a sheachaint lena bhféadfaí an duine a rinne an nochtadh cosanta a aithint. Rachfar i gcomhairle leis an nochtóir agus, nuair is féidir, gheofar toiliú feasach uathu, sula ndéanfar aon ghníomh a bhféadfaí iad a aithint mar thoradh air. Ach, ní dearbhchosaint atá anseo agus d'fhéadfaí céannacht an nochtóra a nochtadh:

- i) sa chás go dtaispeánann an faighteoir gur ghlac sé nó sí gach céim réasúnach le nochtadh faisnéise den sórt sin a sheachaint.
- ii) sa chás go gcreideann an faighteoir go réasúnach nach gcuireann an duine a bhfuil an nochtadh á dhéanamh aige nó aici ina choinne sin.
- iii) sa chás go gcreideann an faighteoir go réasúnach go bhfuil sé riachtanach faisnéis den sórt sin a nochtadh:
 - (a) ar mhaithe le himscrúdú éifeachtach na héagóra lena mbaineann
 - (b) ar mhaithe le baol tromchúiseach do shlándáil an Stáit, don tsláinte phoiblí, don tsábháilteacht phoiblí nó don chomhshaol a chosc, nó
 - (c) ar mhaithe le coiriúlacht a chosc, nó
 - (d) ar mhaithe le cion coiriúil a ionchúiseamh.

nó

- iv) sa chás go bhfuil gá eile lena nochtadh ar mhaithe le leas an phobail nó go n-éilítear sin faoin dlí.

Ba chóir d'oibríthe a bhfuil inní orthu nach bhfuil a gcéannacht á cosaint an duine atá i mbun imscrúdaithe ar an nochtadh a chur ar an eolas. Déanfar aon nithe mar sin a thabharfar ar aird a mheasúnú/a imscrúdú de réir na nósanna imeachta athbhreithnithe agus tabharfar faoin ngníomh cuí nuair is cuí.

Má theipeann ar fhaighteoir cloí leis na ceanglais rúndachta sin, féadfaidh an nochtóir an faighteoir a agairt go pearsanta má fhulaingíonn sé nó sí aon drochiamhairtí.

6. NOCHTADH INMHEÁNACH A FHÁIL AGUS A MHEASÚNÚ

- 6.1 Ní mór caitheamh go dáiríre agus go rúnda le gach nochtadh tuairiscithe maidir le héagóir mheabhairbhraite san áit oibre.
- 6.2 Cuir an nochtóir ar an eolas maidir leis an mBeartas lena chinntiú go bhfuil fios acu ar an nós imeachta maidir le nochtadh inmheánach.
- 6.3 Cé gur féidir nochtadh a dhéanamh ó bhéal, spreag an nochtóir leis an nochtadh a dhéanamh i scríbhinn, ag úsáid na foirme OPWPD01. Mura bhfuil an nochtóir sásta nó mura bhfuil siad ábalta é sin a dhéanamh, nó má tá nochtadh á dhéanamh acu ar an bhfón, déan taifead den nochtadh ar an bhfoirm OPWPD01. Tá sé tábhachtach gach céim den phróiseas a dhoiciméadú.
- 6.4 Ós rud é nach féidir go mbeadh a fhios ag an am cibé an measfar nochtadh a bheith cosanta faoin Acht ina dhiaidh sin agus go dtuimhítear go bhfuil gach nochtadh cosanta, nó go gcruthaítear a mhalairt, ba chóir don fhaighteoir taifead iomlán i scríbhinn dá ngníomhartha a choinneáil, lena n-áirítear amlínte.
- 6.5 Faigh amach más mian leis an nochtóir a chéannacht nó a céannacht a chosaint agus déan cinnte go léirítear é sin ar an bhfoirm OPWPD01.
- 6.6 Glac gach céim réasúnach le céannacht an nochtóra a chosaint, mura bhfuil barúil réasúnach ann go bhfuil gá lena nochtadh leis an éagóir nochtá a imscrúdú go héifeachtach; le coiriúlacht nó baol tromchúiseach do shlándáil an Stáit, don tsláinte phoiblí, don tsábháilteacht phoiblí nó don chomhshaol a chosc; le cion coiriúil a ionchúiseamh; ar mhaithe le leas an phobail nó má éilítear sin faoin dlí. Féadfaidh an nochtóir an faighteoir a agairt go pearsanta as aon chailteanas a eascraíonn as céannacht an nochtóra a nochtadh lasmuigh de na cúinsí sin.
- 6.7 Cuir an nochtóir ar an eolas roimh ré má bhíonn gá le céannacht an nochtóra a nochtadh ar aon chúis díobh sin. Féadfaidh an nochtóir athbhreithniú ar an gcinneadh sin a iarraidh agus ba chóir go ndéanfaí athbhreithniú nuair is indéanta sula ndéanfar nochtadh faisnéise den sórt sin.
- 6.8 Déan cinnte go bhfuil an éagóir atá á líomhnú ábhartha, i.e. go gcomhlíonann sé critéir arna leagan amach in alt 2.4. Mura bhfuil sé, ní chosnófar an nochtadh. Sa chás sin, más mian leis an nochtóir leanúint ar aghaidh leis an nochtadh, tabhair é sin ar a n-aird.
- 6.9 Faigh amach ar tharla an éagóir san am a caitheadh nó an bhfuil sé fós ag tarlú nó an dócha go dtarlóidh sé amach anseo.
- 6.10 Soiléirigh bunús na himní leis an nochtóir, go háirithe aon rud atá doiléir nó nach bhfuil soiléir láithreach.
- 6.11 Más gearán nó casaoid phearsanta atá sa nochtadh i ndáiríre, cuir an nós imeachta cuí in iúl don nochtóir (féach 1.4) agus ná téigh níos faide leis an ábhar mar nochtadh cosanta. I roinnt cásanna, d'fhéadfadh casaoid phearsanta a bheith fite fuaite go mór leis an imní atá léirithe nó d'fhéadfadh gurb é atá mar phríomhchúis ag an nochtóir le nochtadh a dhéanamh. Ós rud é go bhfuil cúis oibrí leis an ábhar a nochtadh neamhábhhartha, lean leis sin mar nochtadh cosanta.
- 6.12 Déan cibé an bhfuil an nochtadh bunaithe ar bharúil réasúnach an nochtóra nó an tuairisc bhréagach d'aon turas atá ann a mheasúnú. Más rud é go bhfuil an nochtadh bréagach d'aon turas, cuir sin in iúl do Sheirbhísí Pearsanra agus Forbartha, a chinnfidh an gníomh smachta a rachfar ina bhun.
- 6.13 D'fhéadfadh nach mbeadh gá le himscrúdú iomlán le haghaidh gach nochtadh. Samplaí is ea cás nach mbeadh na fíricí ábhartha uile ag an nochtóir nó dá mbeadh míthuiscint i gceist. Tá sé

tábhachtach a chinntiú go bhfuil measúnú an cháis sách dian le bunús aon chinnidh a mhíniú don nochtóir.

- 6.14** Ar an dóigh chéanna, sa chás nach bhfuil fianaise láidir ag an nochtóir maidir le héagóir ach go bhfuil barúil réasúnach acu ina leith, ba chóir go leanfaí leis an nochtadh a imscrúdú, rud a d'fhéadfadh fianaise maidir le héagóir a aimsiú.

7. IMSCRÚDÚ MAIDIR LE NOCHTADH INMHEÁNACH AGUS TORADH

- 7.1** Sa chás go gcinneann faighteoir go bhfuil gá le himscrúdú, ba chóir é sin a thionscnamh láithreach. Féadfaidh an faighteoir cinneadh nochtadh a tharchur d'imscrúdú chuig sainaonad nó aonaid eile laistigh den OOP, mar shampla:

- An tAonad Iniúchóireachta Inmheánaí
- An tAonad Comhionannais
- An tAonad Beartais
- an tAonad Sláinte agus Sábháilteachta
- Seirbhísí Pearsanra agus Forbartha

Féadfaidh an faighteoir an t-imscrúdú a tharchur freisin chuig sainimscrúdaitheoir áit oibre nó chuig gníomhaireacht sheachtrach ábhartha, i gcásanna áirithe d'fhéadfaí go gcaithfí an t-ábhar a thuairisciú chuig An nGarda Síochána nó chuig aon chomhlacht eile a bhfuil an chumhacht agus an fheidhm reachtúil imscrúdaithe acu maidir le nithe áirithe agus go rachadh siad i mbun imscrúdaithe.

- 7.2** Ba chóir gach imscrúdú a dhéanamh ar shlí rúnda agus chóir agus de réir phrionsabail an cheartais aiceanta.

- 7.3** Glac gach céim réasúnach le céannacht na ndaoine sin a bhfuil líomhaintí á ndéanamh ina n-aghaidh agus le céannacht an nochtóra a chosaint, mura bhfuil barúil réasúnach ann go bhfuil gá le céannacht an nochtóra a nochtadh leis an éagóir nochtá a imscrúdú go héifeachtach; le coiriúlacht nó baol tromchúiseach do shlándáil an Stáit, don tsláinte phoiblí, don tsábháilteacht phoiblí nó don chomhshaol a chosc; le cion coiriúil a ionchúiseamh; ar mhaithe le leas an phobail nó má éilítear sin faoin dlí.

- 7.4** Cuir an nochtóir ar an eolas roimh ré má bhíonn gá le céannacht an nochtóra a nochtadh le linn an imscrúdaithe ar aon chúis díobh sin, ach amháin i gcásanna eisceachtúla. Féadfaidh an nochtóir athbhreithniú ar an gcinneadh sin a iarraidh agus ba chóir go ndéanfaí athbhreithniú nuair is féidir sin a dhéanamh sula ndéanfar nochtadh faisnéise.

- 7.5** Ba chóir an nochtóir a chur ar an eolas maidir le dul chun cinn, agus go háirithe maidir le toradh an imscrúdaithe. Uaireanta, d'fhéadfadh an gá le rúndacht cosc a chur ar mhionsonraí sainiúla maidir leis an imscrúdú agus/nó aon ghníomh smachta a dtéitear ina bhun a thabhairt do nochtóirí. Ba chóir go gcaithfeadh nochtóirí go rúnda le haon ábhar a thugtar dóibh maidir leis an imscrúdú.

- 7.6** Tá difríocht idir nochtadh rúnda, cás a bhfuil céannacht an nochtóra ar eolas ach nach nochtáitear é agus nochtadh gan ainm, cás nach bhfuil céannacht nochtóra ar eolas.

- 7.7** Sa chás go bhfaightear nochtadh gan ainm, d'fhéadfadh sé a bheith an-deacair an éagóir lena mbaineann sé a imscrúdú, mar nach bhféadfar tuilleadh faisnéise a fháil ón nochtóir maidir leis an éagóir líomhnaithe. Beidh sé dodhéanta freisin an nochtóir a choinneáil ar an eolas maidir le dul chun cinn nó toradh an imscrúdaithe.

- 7.8** Ba chóir gach iarracht réasúnach a dhéanamh, gan tionchar a imirt ar chaighdeán an imscrúdaithe, aon imscrúdú a eascraíonn ó nochtadh a thabhairt chun críche chomh tapa agus is féidir.

8. ATHBHREITHNIÚ AR CINNTÍ

8.1 I gcás nach bhfuil an nochtóir sásta leis na nithe seo a leanas:

a) an cinneadh a rinneadh céannacht an nochtóra a nochtadh

b) toradh an imscrúdaithe a rinneadh i ndáil leis an nochtadh

c) toradh an imscrúdaithe i ndáil le haon ghearán maidir le pionós

féadfaidh an nochtóir iarratas a dhéanamh leis an gCathaoirleach go ndéanfaí athbhreithniú, ach a thabhairt le fios go ndearna Stiúrthóir na Seirbhísí Corparáideacha (agus aon duine a mbíonn air nó uirthi tuairisciú chuige) é a imscrúdú cheana féin agus na cúiseanna a mhothaíonn sé/sí a thabhairt go bhfuil gá le tuilleadh airde sa chás. Rachaidh an Cathaoirleach i mbun measúnú neamhspleách ag leanúint na nósanna imeachta a léirítear in ailt 4, 6 agus 7 thuas. Beidh cinneadh an Chathaoirligh críochnaitheach.

8.2 I gcás nach bhfuil an nochtóir, sa chás go ndearnadh an nochtadh leis an gCathaoirleach ar an gcéad dul síos, féadfaidh an nochtóir iarraidh ar an gCathaoirleach tríú páirtí seachtrach é a athbhreithniú an cinneadh, agus na cúiseanna a léiriú a chreideann sé nó sí gur chóir é a airde tuilleadh. Rachaidh an tríú páirtí ceaptha i mbun measúnú neamhspleách ag leanúint na nósanna imeachta a léirítear in ailt 4, 6 agus 7 thuas. Beidh cinneadh an tríú páirtí ceaptha críochnaitheach.

9. TAIFID

9.1 Ní féidir fios a bheith ann ag an am a dhéantar nochtadh cibé an measfar nochtadh a bheith cosanta faoi Acht 2014 ina dhiaidh sin. Ba chóir taifid i scríbhinn, lena n-áirítear amlínte, i ndáil le haon mheasúnú agus/nó imscrúdú a dhéantar a choinneáil. D'fhéadfadh sé go gcaithfí leas a bhaint as na taifid seo i bpróiseas smachta ina dhiaidh sin sa chás go gcinntear in imscrúdú ach a mbeidh sé críochnaithe gur tharla éagóir éigin.

9.2 Coinneofar na taifid sin ar feadh cúig bliana ar a laghad i ndiaidh dhúnadh an cháis agus déanfar iad a stóráil i dtimpeallacht rúnda agus shlán.

9.3 Ag tráth nach déanaí ná an 30 Meitheamh gach bliain foilseofar tuarascáil maidir le gach nochtadh cosanta sa bhliain díreach roimhe sin ar láithreán gréasáin an OOP agus cuirfear san áireamh é i dTuarascáil Bhliantúil an OOP. Níor chóir go n-aithneofaí aon pháirtí lena mbaineann sa tuarascáil sin, ach ba chóir go leagfaí na nithe seo a leanas amach ann:

(a) líon na nochtuithe cosanta arna ndéanamh leis an OOP,

(b) an gníomh (más ann) a ndeachthas ina bhun mar fhreagra do na nochtuithe cosanta sin, agus

(c) aon fhaisnéis eile a bhaineann leis na nochtuithe cosanta sin agus an gníomh a ndeachthas ina bhun a d'fhéadfadh an tAire Caiteachais Phoiblí agus Athchóirithe a iarraidh ó am go ham.

10. ATHBHREITHNIÚ BEARTAIS

Féadfar an Beartas seo a chúlghairm, a athsholáthar nó a leasú ag aon tráth. Déanfar é a athbhreithniú leis an treoir ón Aire Caiteachais Phoiblí agus Athchóirithe a ionchorprú, mar a leagtar amach in Alt 21 den Acht.

Aguisín 1: Sonraí Teagmhála Faighteoirí

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