

# Whistleblowing Bill

[AS INTRODUCED]

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*Office of the Whistleblower Bill* 1

*Part 1 – Protected disclosures, whistleblowers and relevant persons*

[AS INTRODUCED]

A

# BILL

TO

Establish an independent Office of the Whistleblower to protect whistleblowers and whistleblowing and uphold the Public Interest; to create offences relating to the treatment of whistleblowers and the handling of whistleblowing cases; to make provision for that body to set, monitor and enforce standards for the management of whistleblowing cases, to provide disclosure and advice services, to direct whistleblowing investigations, to order redress of detriment suffered by whistleblowers; to repeal the Public Interest Disclosure Act 1998; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### PROTECTED DISCLOSURES, WHISTLEBLOWERS AND RELEVANT PERSONS

#### 1 Protected disclosures

- (1) In this Act, a “protected disclosure” means any disclosure of information which is made in the public interest to such person as is specified in subsection (3), which relates to one or more of the matters in subsection (2) and which relates to a circumstance which:
- (a) has occurred
  - (b) is occurring or
  - (c) may occur.

- (2) Those matters are—
- (a) a criminal offence or regulatory breach;
  - (b) the failure of any person including a relevant person to comply with a legal obligation;
  - (c) a miscarriage of justice;
  - (d) the endangering of the health or safety of any person;
  - (e) damage to the environment;
  - (f) mismanagement of public funds;
  - (g) misuse or abuse of authority;
  - (h) such other matter as may be prescribed in regulations made by the Secretary of State;
  - (i) concealment of information or removal or deletion or destruction of any documents relating to any of the above matters.

- (3) Those persons are -
- (a) the Office of the Whistleblower;
  - (b) a relevant person;
  - (c) a person who, in the reasonable belief of the person making the disclosure is a relevant person;
  - (d) a person to whom it is reasonable for the person making the disclosure to make that disclosure.

## **2 Whistleblowers**

In this Act, a person is a “whistleblower” if that person has made, makes or is intending to make a protected disclosure or is perceived by a relevant person to have made, be making or intending to make a protected disclosure.

## **3 Duties of relevant person**

- (1) In this Act, a “relevant person” means—
- (a) an employer;
  - (b) a body acting on behalf of a group of employers;
  - (c) a regulator ;
  - (d) a public authority;
  - (e) any organisation with a statutory obligation to safeguard; or
  - (f) such person as may be prescribed by an order made by the Secretary of State for the purposes of this section.
- (2) A relevant person must not subject, or cause or permit others to subject, a person to detriment as a consequence of that person —
- (a) being or being perceived to be a whistleblower; or
  - (b) being or being perceived to be a person associated with a whistleblower or with a person perceived as a whistleblower;
  - (c) making an allegation (whether or not express) that a person has contravened this Act

- (d) bringing proceedings or giving evidence or information in connection with this Act;
  - (e) doing any other thing for the purposes of or in connection with this Act
  - (f) being a person facilitating the making by another of a protected disclosure
- (3) For the purposes of section 3(1)(a), a protected disclosure is made to a relevant person if it is made by a whistleblower to any person who, in the reasonable belief of the whistleblower, is a person who is in a position:
- (i) to address the matters raised in it; or
  - (ii) to refer it to a person who is in a position to address the matters raised in it.
- (4) A detriment is that which causes disadvantage loss or harm to a person.
- (5) A relevant person shall be obliged to respond timeously and in a co-operative manner with any request made of that person by the Office of the Whistleblower.
- (6) A relevant person to whom a protected disclosure has been made shall deal with that disclosure in accordance with such standards as may have been laid down from time to time by the Office of the Whistleblower.

## **PART 2**

### THE OFFICE OF THE WHISTLEBLOWER

#### **4 Principal duty and objectives**

- (1) There shall be a body corporate called the Office of the Whistleblower (in this Act referred to as “the Office”).
- (2) The principal duty of the Office is to protect whistleblowers and have oversight of the process of whistleblowing.
- (3) The Office shall carry out all its work in accordance with the principal duty.
- (4) The objectives of the Office are –
- (a) to encourage and support whistleblowers to refer concerns to the appropriate authorities;
  - (b) to support an effective and fair whistleblowing process;
  - (c) to protect the public purse and ensure that wrongdoers bear the cost of wrongdoing revealed by whistleblowing;
  - (d) to promote good governance through the normalisation of whistleblowing;
  - (e) to ensure that concerns raised by whistleblowers are acted upon;
  - (f) to monitor and review the operation of this Act.
- (5) The Office shall seek to achieve those objectives consistently with its principal duty.
- (6) The functions of the Office are to –

- (a) set minimum standards for whistleblowing policies, procedures and reporting structures;
- (b) monitor the compliance of organisations with those standards;
- (c) enforce compliance with those standards;
- (d) bring prosecutions for the offences specified in Part 3;
- (e) provide an independent disclosure and reporting service;
- (g) provide information and advice on whistleblowing;
- (h) provide support for whistleblowers;
- (i) Share information with relevant regulatory and other bodies in the United Kingdom and abroad so far as it may judge this necessary or desirable to enable it to achieve its objectives or perform its other functions;
- (j) promote public awareness of the importance of whistleblowing and the protections provided to whistleblowers.

## **5 Governance**

- (1) The Office shall be led by an independent person to be appointed by the Secretary of State and who shall be known as the “Whistleblowing Officer” (“the Officer”).
- (2) The work of the Office of the Whistleblower and of the Officer shall be overseen by a board of directors to be appointed from time to time by the Secretary of State.
- (3) The Office shall report regularly on the exercise of its duties, objectives and functions.
- (4) Reports under subsection (3) should be made to –
  - (a) Senedd Cymru in relation to matters within its legislative competence;
  - (b) the Scottish Parliament in relation to matters within its legislative competence;
  - (c) Parliament in relation to all other matters, including the overall approach of the Office.
- (5) The Secretary of State may by regulations make further provision for the functions and governance of the Office.

## **6 Standards for handling protected disclosures**

- (1) The Office shall set minimum standards for relevant persons in carrying out their duties under section 3.
- (2) Standards for handling protected disclosures shall include requirements for –
  - (a) preserving the confidentiality and anonymity of the whistleblower;
  - (b) screening, assessment and investigation methods;
  - (c) referrals to other relevant regulatory or other bodies, both in the United Kingdom and foreign ;
  - (d) information to be provided to the whistleblower; and
  - (e) information to be reported to the Office.
  - (f) Any other matters as may to the Office seem appropriate
- (3) The Office may make such provision as may to it appear appropriate for the accreditation of whistleblowing schemes operated by a relevant persons as meeting the standards referred to under this section (an “accredited scheme”).

## 7 Independent Investigation, disclosure and reporting service

- (1) The Office shall have such powers in relation to whistleblowing complaints (including powers to establish schemes for the recognition of whistleblowers, powers of investigation in relation to whistleblowing complaints, and in relation to the handling of complaints by relevant persons) and such other matters falling within its rights and duties as may be prescribed in regulations made from time to time by the Secretary of State.
- (2) In particular, such regulations shall include:
  - (a) provision for the Office to assess complaints made to it by whistleblowers, to process such complaints (other than those it shall have determined to be frivolous, malicious or vexatious) and to refer such complaints to the relevant regulator, as well also as to conduct its own investigation into a protected disclosure made by a whistleblower if –
    - (i) the whistleblower has no access to an accredited scheme; or
    - (ii) the whistleblower reasonably believes that he or she is being subjected to detriment, victimised or obstructed in his or her use of an accredited scheme; or
    - (iii) there is a risk of the concealment or destruction of evidence should the whistleblower use an accredited scheme; or
    - (iv) there is, in the opinion of the Office, a serious or imminent risk to the public
  - (b) provision for the Office to assess and where appropriate investigate a report that a protected disclosure has not been handled in accordance with the standards specified in section 6;
  - (c) provision for the exercise by the Office of powers of entry and inspection.
- (3) The office shall not consider a complaint made by a Whistleblower under this section unless it is presented –
  - (a) before the end of the period of six months beginning with the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them, or
  - (b) within such further period as the office considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of six months.
- (4) For the purposes of subsection (3) –
  - (a) where an act extends over a period, the “date of the act” means the last day of that period, and

(b) a deliberate failure to act shall be treated as done when it was decided on; and, in the absence of evidence establishing the contrary, a relevant person shall be taken to decide on a failure to act when that person does an act inconsistent with doing the failed act or, if that person has done no such inconsistent act, when the period expires within which that person might reasonably have been expected to do the failed act if it were to be done.

## **8 Information notices**

- (1) The Office may issue a written notice (an “information notice”)
  - (a) requiring any person to provide such information as the Office reasonably requires for the purposes of carrying out the Office's functions.
  - (b) requiring any person to provide the Office with such information as the Office may require for the purposes of investigating any of the offences specified in Part 3 of this Act;
- (2) An information notice shall state -
  - (a) whether it is given under subsection 1(a) or 1(b), and
  - (b) the reason why the Office requires the information
- (3) An information notice may -
  - (a) specify or describe particular information or a category of information;
  - (b) specify the form in which the information must be provided;
  - (c) specify the time at which, or the period within which, the information must be provided;
  - (d) specify the place at which or the manner in which the information must be provided;
- (4) An information notice shall specify –
  - (a) the consequences of failure to comply with it, and
  - (b) rights of appeal under section 11
- (5) An information notice may not require a person to provide information before the end of the period within which an appeal can be brought against the notice.
- (6) If an appeal is brought against an information notice, the information need not be provided pending the determination or withdrawal of the appeal.
- (7) If an information notice –
  - (a) states that, in the Office’s opinion, the information is required urgently, and
  - (b) gives the Office’s reasons for that opinion (“an urgency statement”),subsections (5) and (6) shall not apply but the notice must not require the information to be provided before the end of the period of 24 hours beginning when the notice is given.
- (8) The Office may withdraw an information notice by written notice to the person to whom it was given

(9) An information notice shall not require a person to give the Office information to the extent that requiring the person to do so would involve an infringement of the privileges of either House of Parliament.

(10) An information notice shall not require a person to give the Office information in respect of a communication which is made subject Legal Professional privilege.

(11) Save as provided in subsection (12), an information notice shall not require a person to provide the Office with information if doing so would, by revealing evidence of an offence, expose the person to criminal proceedings in respect of that offence.

(12) The reference to an offence in subsection (11) does not include an offence under –

- (a) this Act;
- (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
- (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
- (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements);
- (e) An oral or written statement provided by a person in response to an information notice may not be used in evidence against that person in criminal proceedings in respect of an offence under this Act (other than an offence under subsection (14) unless in those proceedings:
  - (i) in giving evidence the person makes a statement inconsistent with the written statement, or
  - (ii) evidence relating to the written statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.

(13) If, on an application by the Office to the Tribunal, the Tribunal is satisfied that a person has failed to comply with a requirement of an information notice, it may make an order requiring the person to provide to the Office –

- (a) information referred to in the information notice;
- (b) other information which the Tribunal is satisfied that the Office requires, having regard to the statement included in the notice in accordance with section 8(2)(b). Shall make an adverse inference against the non-compliance party.

(14) Such order –

- (a) shall specify the time by which, or the period within which, the information is required to be provided,
- (b) may specify the form in which the information is required to be provided, and
- (c) may specify the place at which the information is required to be provided

(15) In the event of a person failing to comply with such an order, the Office may draw an adverse inference from such failure;

(16) Any person who fails to take all reasonable steps to comply with the requirements of an information notice shall be subject to a civil penalty in terms of section 21 hereof.



## 9 Action notices

- 1) If the Office is of the opinion that a person—
  - (a) is contravening one or more standards specified in section 6, or
  - (b) has contravened one or more of those standards in circumstances which make it likely that the contravention will continue or be repeated,it may issue a written notice (an “action notice”) which requires the person to take, or refrain from taking, such steps as are specified in the notice.
- 2) An action notice given in reliance on subsection (1) may impose only such requirements as the Office may consider appropriate having regard to the failure, whether or not for the purpose of remedying the failure.
- 3) An action notice must provide information concerning—
  - (a) The consequences of failure to comply with it, and
  - (b) The rights of Appeal under section 11
- 4) An action notice may specify the time or times at which or period or periods within which a requirement imposed by the notice must be complied with. That period shall not fall before the end of the period within which an appeal can be brought against the notice.
- 5) If an appeal is brought against an action notice, any requirement in the notice need not be complied with pending determination or withdrawal of the appeal
- 6) If an action notice –
  - (a) states that in the Office’s opinion it is necessary for a requirement to be complied with urgently; and
  - (b) states reasons for that opinion (“an urgency statement”)subsection (5) does not apply but the notice must not itself require the requirement to be complied with before the end of the period of 24 hours beginning when the notice is given.
- 7) Section 12 (civil penalties) applies to any person who fails to take all reasonable steps to comply with an action notice.
- 8) The Office may cancel an information notice by written notice to the person to whom it was given
- 9) A person to whom an action notice is given may apply in writing to the Office for the cancellation or variation of the notice.
- 10) An application under subsection (9) may be made at any time, but, if made after the period within which an appeal can be brought against the notice may be brought only on the ground that, by reason of a change of circumstances, one or more of the provisions of that notice need not be complied with in order to remedy the failure identified in the notice.
- 11) On consideration of an application under subsection (9), the Office may cancel or vary an information notice.

12) Any person who fails to take all reasonable steps to comply with the requirements of an action notice shall be subject to a civil penalty in terms of section 21 hereof.

## **10 Redress Orders**

- (1) In the event that the Office is of the opinion that a relevant person has subjected a person to detriment as a consequence of that person being a person specified in section 3(2), it may issue an order (a “redress order”) to the relevant person directing the relevant person to take, or refrain from taking, such steps as may be specified in the order so as to provide to the whistleblower such redress as the Office may determine.
- (2) A redress order shall include an order for financial redress where loss or damage has been incurred. No such order shall be subject to any cap.
- (3) For the purposes of determining whether to issue a redress order, the Office shall assume that a whistleblower who has been subject to detriment was subject to that detriment for the reasons in subsection (1) unless the relevant person can on the balance of probabilities prove otherwise.
- (4) The Office may issue a redress order whether the detriment was caused –
  - (a) deliberately;
  - (b) recklessly
  - (c) negligently; or
  - (d) otherwise in breach of a statutory or other legal duty owed by the relevant person to the whistleblower;
- (5) The Office may cancel or vary a redress order by giving written notice to the person to whom the Order was addressed.
- (6) Any person who fails to take all reasonable steps to comply with a redress order shall be subject to a civil penalty in terms of section 21 hereof.

## **11. Interim Relief Orders**

- (1) The Office may issue an Interim Relief Order in the event that it considers it reasonably necessary to do so in order to protect the interests of a whistleblower pending the completion of investigations concerning a complaint from that whistleblower or into the content of a protected disclosure.
- (2) Such Order shall specify such interim relief as the Office may consider appropriate;
- (3) Any person who fails to take all reasonable steps to comply with an interim relief order shall be subject to a civil penalty in terms of section 21 hereof.

## **12. Publication of Guidance**

The Office shall publish from time to time Guidance concerning the manner in which the Office exercises or proposes to exercise its functions and powers in connection with the issuing of -

- (i) information notices;

- (ii) action notices;
- (iii) redress orders;
- (iv) interim relief orders; and
- (iv) civil penalties

## PART 3

### FIRST TIER TRIBUNAL

#### **13 First Tier Tribunal**

- (1) The Secretary of State shall by regulations make provision for the establishment of a tribunal to be known as the First Tier Tribunal.
- (2) In this Act, “the Tribunal” in relation to any appeal, application or reference, means the First Tier Tribunal, unless otherwise provided.
- (3) The Tribunal shall exercise the jurisdiction conferred on it:
  - (a) by or by virtue of this Act;
  - (b) by any other Act or regulations, whether passed before or after this Act.

#### **14 Appeals: general**

- (1) An appeal may be brought to the Tribunal against any decision, direction or order of the Office.
- (2) Such an appeal may be brought by -
  - (a) any person to whom the Office may have issued -
    - (i) an information notice;
    - (ii) an action notice;
    - (iii) a redress order;
    - (iv) an interim relief order;
    - (v) a civil penalty;
    - (vi) a finding under section 7(2) (a) that a complaint is frivolous, malicious or vexatious; or
    - (vii) an order pursuant to section 14(3).
  - (b) a whistleblower or any other person specified in section 3(2) in whose favour the Office has granted or failed to grant -
    - (i) a redress order or
    - (ii) an interim relief order;or has otherwise made a determination upon or concerning or has failed to make a determination upon or concerning that person’s complaint;
  - (c) Any other person whom the Secretary of State may by regulations prescribe.

(3) Such appeal may be on a matter of law, a matter of fact or a matter of fact and law, and to that end, the Tribunal may review any determination of fact on which the notice or decision being appealed was based.

(4) In determining such appeal, the Tribunal may uphold, recall or vary such order, notice or penalty as may have been made by the Office or may in any case substitute such Order as it considers appropriate, and may do so also in the event of a change of circumstances since the original order or notice may have been made.

(5) In determining such an appeal the Tribunal –

- (a) must consider afresh the decision, direction or order appealed against, and
- (b) may take into account evidence which was not available to the Office.

(6) The Tribunal may –

- (a) dismiss the appeal, or
- (b) if it allows the appeal -
  - (i) remit the matter to the Office, or
  - (ii) exercise any power which the Office could exercise.

## **15 Appeals: orders under s.8**

- (1) Section 14(4) and section 14(5)(a) do not apply in relation to an appeal against an order made under section 8 (power to issue an information notice).
- (2) On such an appeal the Tribunal must consider whether the information or document in question is relevant to the discharge of the functions of the Office.
- (3) The Tribunal may allow such an appeal only if it is satisfied that the information or document in question does not fall within subsection (2).

## **16 Appeals: urgency statements**

- (1) Without prejudice to the foregoing generality, where an information notice or action notice contains an urgency statement, the person upon whom the notice was served may apply to the Tribunal for either or both of the following –
  - (a) the disapplication of the Urgency Statement in relation to some or all of the requirements of the notice;
  - (b) a change to the time at which, or the period within which, a requirement of the notice must be complied with.
- (2) On determining an application under subsection (1), the Tribunal may do any of the following –
  - (a) direct that the notice is to have effect as if it did not contain the Urgency Statement;
  - (b) direct that the inclusion of the Urgency Statement is not to have effect in relation to a requirement of the notice;
  - (c) vary the notice by changing the time at which, or the period within which, a requirement of the notice must be complied with;
  - (d) vary the notice by making such other changes as may be required to give effect to a direction under subsection (a) or (b) or in consequence of a variation under subsection (c).

- (3) The decision of the Tribunal on an application under subsection (1) shall be final and not subject to Appeal to the Upper Tribunal.

## **17 Conduct of hearings**

A person may appear before the First Tier Tribunal in person or be represented by –

- (a) counsel or a solicitor,
- (b) a representative of a trade union or an employers' association, or
- (c) any other person whom he desires to represent him.

## **18 First Tier Tribunal procedure regulations**

(1) The Secretary of State shall by regulations make such provision as appears to him to be necessary or expedient with respect to proceedings before the First Tier Tribunal.

(2) Proceedings before the First Tier Tribunal shall be instituted in accordance with the First Tier Tribunal procedure regulations.

(3) The First Tier Tribunal procedure regulations shall, in particular, include provision –

(a) for requiring persons to attend to give evidence and produce documents and for authorising the administration of oaths to witnesses,

(b) for enabling the First Tier Tribunal, on the application of any party to the proceedings before it or of its own motion, to order –

(i) in England and Wales, such discovery or inspection of documents, or the furnishing of such further particulars, as might be ordered by the county court on application by a party to proceedings before it, or

(ii) in Scotland, such recovery or inspection of documents as might be ordered by a sheriff,

(c) for prescribing the procedure to be followed in any proceedings before the First Tier Tribunal, including provision for enabling the First Tier Tribunal to review its decisions, and revoke or vary its orders and awards, in such circumstances as may be determined in accordance with the regulations,

(d) for prescribing the procedure to be followed in proceedings involving questions of national security,

(e) for prescribing the time limit of not less than 12 weeks for appeals and applications to the First Tier Tribunal;

(f) for providing extensions of time in which to appeal or submit applications to the First Tier Tribunal in circumstances in which it is just and equitable to do so;

(g) for providing for circumstances in which the Tribunal shall refer a matter to the appropriate prosecuting authority;

(h) for providing for an uplift in any damages awarded in the event that there has occurred such conduct as is referred to in section 1(2)(g)

## **19 Remission of matters to Office**

References to the power to remit a matter to the Office are to the power to remit the matter –

- (a) generally, or
- (b) for determination in accordance with a finding made or direction given by the Tribunal.

## **20 Appeal to Upper Tribunal.**

Save as provided for in section 16(3) an appeal lies to the Upper Tribunal on any question of law arising from any decision of, or arising in any proceedings under this Act before the First Tier Tribunal.

# **PART 4**

## **CIVIL PENALTIES**

### **21 Civil penalties**

- (1) Where the Office is satisfied that by reason of any person's failure to comply with that person's obligations under sections 8, 9, 10, or 11, the Office may by notice in writing require that person to pay, within a prescribed period, a penalty in respect of that failure not exceeding the maximum amount.
- (2) In this section “the maximum amount” means –
  - (a) in the case of an individual, 10% of that individual's gross annual income, not to exceed £50,000; and
  - (b) in any other case, 10% of annual global turnover, not to exceed £18,000,000 ;  
or
  - (c) such higher maximum amounts as the Secretary of State may from time to time prescribe
- (3) In the event of a penalty being imposed under this section, the amount of that penalty shall be payable directly to the Office.
- (4) In the event of such penalty not being recovered the Office shall be entitled to seek to recover the same by way of such means of civil enforcement or diligence as may be available to it in England and Wales, Scotland or Northern Ireland as may be appropriate.

## PART 5

### CRIMINAL OFFENCES

#### **22 Offence of subjecting a whistleblower to detriment**

- (1) A person who intentionally or recklessly submits such a person as is specified in section 3(2) to detriment shall be guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to imprisonment for a term not exceeding 18 months or a fine, or both.
- (3) In determining the sentence to be imposed upon conviction of a person of an offence under this Act the Court may treat as an aggravating factor that the victim was subjected to detriment for the reason of retaliation.

#### **23 Other Offences**

- (1) It is an offence for a person, in response to an information notice—
  - (a) to make a statement which that person knows to be false in any material respect; or
  - (b) recklessly to make a statement which is false in any material respect.
- (2) Where a person has been served with an information notice, it is an offence for the person -
  - (a) to destroy or otherwise dispose of, conceal, block or (where relevant) falsify or otherwise modify all or any part of the information, document, equipment or material, or
  - (b) to cause or permit the destruction, disposal, concealment, blocking, falsification or modification of all or part of the information, document, equipment or material,with the intention of preventing the Office from being provided with or directed to, or examining all or any part of the information, document, equipment or material.
- (3) It is a defence for a person charged with an offence under subsection (2) to prove that the destruction, disposal, concealment, blocking, falsification or modification would have occurred in the absence of the person to whom the notice may have been given.

## PART 6

### SUPPLEMENTARY PROVISIONS

#### **24 Prohibition of agreements containing confidentiality and equivalent clauses**

- (1) Any agreement between a relevant person and any other person is void in so far as it purports to prevent or restrict that other person from making a protected disclosure.
- (2) Without prejudice to the foregoing generality, agreements void under this section shall include—
  - (a) agreements containing confidentiality and equivalent clauses;
  - (b) other contractual duties of confidentialityinsofar as the same shall relate to protected disclosures.
- (3) In the event that the Office may reasonably determine that any such agreement as is specified in subsections (1) and (2) (including any proposed agreement) has the effect of preventing or restricting a person from making a protected disclosure, the Office may issue an order declaring its invalidity and take such further or other steps in that regard as it may consider appropriate.

#### **25 Protection of whistleblowers against criminal or civil action**

- (1) In the event that any person is prosecuted for any offence consisting in the disclosure of information in circumstances where such disclosure is prohibited or restricted, it shall be a defence for that person to show that, at the time of the alleged offence, the disclosure was, or was reasonably believed by that person to be, a protected disclosure.
- (2) No cause of action in civil proceedings shall lie against a person in respect of the making of a protected disclosure.

## PART 7

### REMAINING PROVISIONS

#### **26 Standards: procedure**

- (1) In proposing standards under section 6, the Office shall consult with -
  - (a) ACAS, the British Standards Institute, and the Secretary of State, and, additionally,
  - (b) with the Welsh Ministers regarding any proposed standard relating to a matter within the legislative competence of Senedd Cymru; and
  - (c) the Scottish Ministers regarding any proposed standard relating to a matter within the legislative competence of the Scottish Parliament.
- (2) Thereafter, the Office shall communicate the proposed standard to the Secretary of State, Senedd Cymru and the Scottish Ministers as may be appropriate.
- (3) The Secretary of State shall, on receipt of the proposed standard under subsection (2) lay a draft of a statutory instrument containing that standard before both Houses of Parliament.



(4) That standard may not be made unless the draft statutory instrument laid under subsection (7) has been approved by resolution of each House of Parliament.

(5) The Welsh Ministers shall, on receipt of the proposed standard under subsection (2), lay a draft of a statutory instrument containing that standard before Senedd Cymru for its approval.

(6) The Scottish Ministers shall, on receipt of the proposed standard under subsection (2), lay a draft of a Scottish statutory instrument containing that standard before the Scottish Parliament

(7) That standard may not be made unless the draft statutory instrument laid under subsection (6) has been approved under the affirmative procedure in accordance with section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010.

## **27 Regulations**

- (1) A power to make regulations under sections 5, 7, 13, 14 18 and 21 is exercisable by statutory instrument.
- (2) Regulations made under those sections
  - (a) may make supplementary, incidental, transitional or saving provision;
  - (b) may make different provision for different purposes, areas or issues involving matters of national security and
  - (c) may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by, each House of Parliament;
- (3) Before laying any such draft statutory instrument the Secretary of State shall consult –
  - (a) the Welsh Ministers; and
  - (b) the Scottish Ministers.

## **28 Repeals**

Sections 43A to 43L , 47B and 103A of the Employment Rights Act 1996 are hereby repealed.

## **29 Financial provisions**

There is to be paid out of money provided by Parliament –

- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State; and
- (b) any increase attributable to this Act in the sums payable under any other 5 Act out of money so provided.

## **30 Extent, commencement and short title**

- (1) This Act extends to England and Wales and Scotland.
- (2) This section comes into force on the day on which this Act is passed.
- (3) The rest of this Act comes into force on such day or days as the Secretary of State may by regulations made by statutory instrument appoint.
- (4) Regulations under subsection (3) may make transitional, transitory or saving provision.
- (5) This Act may be cited as the Office of the Whistleblower Act 2022.