

# Protections For Persons Reporting Child Abuse Act, 1998.

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*Number 49 of 1998*

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## **PROTECTIONS FOR PERSONS REPORTING CHILD ABUSE ACT, 1998**

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### ARRANGEMENT OF SECTIONS

#### Section

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#### Acts Referred to

<u>Health Act, 1970</u>	1970, No. 1
Petty Sessions (Ireland) Act, 1851	14 & 15 Vict., c. 93
<u>Terms of Employment (Information) Act, 1994</u>	1994, No. 5
<u>Unfair Dismissals Act, 1977</u>	1977, No. 10
Unfair Dismissals Acts, 1977 to 1993	

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**PROTECTIONS FOR PERSONS REPORTING CHILD ABUSE ACT, 1998**

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AN ACT TO PROVIDE PROTECTION FROM CIVIL LIABILITY TO PERSONS WHO REPORT CHILD ABUSE IN CERTAIN CIRCUMSTANCES, TO PROVIDE PROTECTION TO SUCH PERSONS FROM PENALISATION BY THEIR EMPLOYERS, TO PROVIDE FOR AN OFFENCE IN RESPECT OF THE FALSE REPORTING OF CHILD ABUSE AND TO PROVIDE FOR RELATED MATTERS. [23rd December, 1998]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act, unless the context otherwise requires—

“*the Act of 1994*” means the Terms of Employment (Information) Act, 1994 ;

“*appropriate person*” means a designated officer or a member of the Garda Síochána;

“*child*” means a person who has not attained 18 years of age;

“*designated officer*” means an officer of a health board appointed under section 2 of this Act to be a designated officer for the purposes of this Act;

“*employee*” and “*employer*” have the same meaning as they have in the Act of 1994;

“*health board*” means a health board established under the Health Act, 1970 ;

“*the Minister*” means the Minister for Health and Children;

“*welfare*”, in relation to a child, comprises the moral, intellectual, physical, emotional and social welfare of the child.

(2) In this Act a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

Designated officers.

2.—(1) The chief executive officer of each health board shall—

(a) immediately upon the commencement of this Act, and

(b) thereafter from time to time as occasion may require (including a case in which a direction is given under this section),

appoint one or more officers of the board to be a designated officer or designated officers for the purposes of this Act; in making any such appointment the chief executive officer shall comply with any direction under this section for the time being in force.

(2) The Minister may give a direction in writing to the chief executive officer of a health board requiring him or her to appoint to be designated officers each person falling within a category or categories of officer of the board specified in the direction.

(3) The Minister may give a direction in writing to the chief executive officer concerned amending or revoking a direction given to him or her under this section (including a direction under this subsection).

(4) In this section "*chief executive officer*" includes a person acting as deputy chief executive officer in accordance with section 13 of the Health Act, 1970 .

Protection from civil liability of persons who have reported child abuse. **3.—(1)** A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by him or her to an appropriate person of his or her opinion that—

(a) a child has been or is being assaulted, ill-treated, neglected or sexually abused, or

(b) a child's health, development or welfare has been or is being avoidably impaired or neglected,

unless it is proved that he or she has not acted reasonably and in good faith in forming that opinion and communicating it to the appropriate person.

(2) The reference in *subsection (1)* of this section to liability in damages shall be construed as including a reference to liability to be the subject of an order providing for any other form of relief.

Protection of employees from penalisation for having reported child abuse. **4.—(1)** An employer shall not penalise an employee for having formed an opinion of the kind referred to in section 3 of this Act and communicated it, whether in writing or otherwise, to an appropriate person if the employee has acted reasonably and in good faith in forming that opinion and communicating it to the appropriate person.

(2) In proceedings under this section before a rights commissioner or the Employment Appeals Tribunal in relation to a complaint that *subsection (1)* of this section has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

(3) If a penalisation of an employee, in contravention of *subsection (1)* of this section, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts, 1977 to 1993, relief may not be granted to the employee in respect of that penalisation both under this section and under those Acts.

(4) An employee may present a complaint to a rights commissioner that his or her employer has contravened *subsection (1)* of this section in relation to him or her and, if he or she does so, the commissioner shall give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, shall give a decision in writing in relation to it and shall communicate the decision to the parties.

(5) A decision of a rights commissioner under *subsection (4)* of this section shall do one or more of the following:

- (a) declare that the complaint was or, as the case may be, was not well founded,
- (b) require the employer to comply with *subsection (1)* of this section, and, for that purpose, require the employer to take specified steps,
- (c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 104 weeks remuneration in respect of the employee's employment calculated in accordance with regulations under section 17 of the Unfair Dismissals Act, 1977 ,

and the references in the foregoing paragraphs to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(6) For the purposes of this section—

- (a) subsections (3) to (6) and subsection (7)(a) of section 7 of the Act of 1994 shall apply in relation to a complaint presented under this section as they apply in relation to a complaint presented under subsection (1) of that section 7, with the following modifications, namely—

- (i) the deletion in that subsection (3) of all the words from “if it is presented” to the end of that subsection and the substitution of “unless it is presented to him within the period of 12 months beginning on the date of the contravention to which the complaint relates or (in a case where the rights commissioner is satisfied that exceptional circumstances prevented the presentation of the complaint within the period aforesaid) such further period, not exceeding 6 months from the expiration of the said period of 12 months, as the rights commissioner considers reasonable”,
  - (ii) the substitution in that subsection (6) of a reference to a decision for the reference to a recommendation,  
and any other necessary modifications,
- (b) sections 8 to 10 of the Act of 1994 shall apply as they apply for the purposes of that Act, with the following modifications, namely—
- (i) the substitution in those provisions of references to a decision for references to a recommendation,
  - (ii) the addition to section 8 of the following subsection:  
“(7) Proceedings under this section before the Tribunal shall be heard otherwise than in public.”,
  - (iii) the substitution in section 9 of the Act of 1994 of—
    - (I) references to the Circuit Court for references to the District Court,  
and
    - (II) the following subsection for subsection (3):  
“(3) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, trade or business.”,and any other necessary modifications.

(7) For the avoidance of doubt nothing in *subsection (6)* of this section operates to confer on the Minister any of the functions of the Minister for Enterprise, Trade and Employment under the Act of 1994 and those functions shall be performable by the Minister for Enterprise, Trade and Employment for the purposes of the provisions of the Act of 1994, as applied by that *subsection (6)*, to the like extent as they are performable by him or her for the purposes of the Act of 1994 and the provisions of the Act of 1994 (including section 11) shall apply accordingly.

False reporting of  
child abuse.

**5.—(1)** A person who states to an appropriate person that—

(a) a child has been or is being assaulted, ill-treated, neglected or sexually abused, or

(b) a child's health, development or welfare has been or is being avoidably impaired or neglected,

knowing that statement to be false shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment, to a fine not exceeding £15,000 or to imprisonment for a term not exceeding 3 years or to both.

(3) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 2 years from the date on which the offence was committed or, if later, 2 years from the date on which evidence that, in the opinion of the person by whom the proceedings are brought, is sufficient to justify the bringing of the proceedings comes to that person's knowledge.

(4) For the purposes of *subsection (3)* of this section, a certificate signed by or on behalf of the person bringing the proceedings as to the date on which the evidence referred to in that subsection relating to the offence concerned came to his or her knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purpose of this subsection and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate.

Saving.

**6.—** Section 3 of this Act is in addition to, and not in substitution for, any privilege or defence available in legal proceedings, by virtue of any enactment or rule of law in force immediately before the passing of this Act, in respect of the communication by a person to another (whether that other person is an appropriate person or not) of his or her opinion that—

(a) a child has been or is being assaulted, ill-treated, neglected or sexually abused, or

(b) a child's health, development or welfare has been or is being avoidably impaired or neglected.

Short title and commencement.

**7.—**(1) This Act may be cited as the Protections for Persons Reporting Child Abuse Act, 1998.

(2) This Act shall come into operation one month after its passing.