



An Roinn Talmhaíochta,  
Bia agus Mara  
Department of Agriculture,  
Food and the Marine

# Department of Agriculture, Food and the Marine

## Protected Disclosures Policy & Procedures

### Mission Statement

To lead, enable and regulate the sector in a way that optimises its contribution to social, economic and environmental sustainability

September 2023

## DAFM Protected Disclosures Policy

### Document Control

Version	Date	Author	Description of Change	Date approved by MB
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## 1. Introduction

The Management Board of the Department of Agriculture, Food and the Marine are strongly committed to ensuring that the culture and work environment are such that any member of staff is encouraged and supported in ‘speaking-up’ on any issue that may impact adversely on the Department’s ability to properly and fully carry out all its roles and responsibilities to the high performance standard required.

Consistent with existing good practice and relevant policies, it is expected that any appropriate issue raised by a member of staff with their line manager will be dealt with professionally and appropriately. This is essential to ensuring that all significant risks arising for the Department are identified and effectively managed. In addition, any member of staff appropriately raising any issue of concern will not be disadvantaged for doing so.

This should be the case irrespective of whether the issue falls under this policy and procedures document or not.

## 2. Protected Disclosures Act 2014 and the Protected Disclosures (Amendment) Act 2022.

The Protected Disclosures Act 2014 and Protected Disclosures (Amendment) Act 2022 (referred to in this policy as the Act or 2014 Act) provide a robust statutory framework within which workers can raise genuine concerns

regarding potential wrongdoing that has come to their attention in the workplace. They can do so in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so. The term *Protected Disclosure* describes this facility. A disclosure is protected when a person discloses relevant information through the appropriate channels as set out in the Act and described in this policy document.

In 2019, the European Union adopted Directive 2019/1937 on the protection of persons who report breaches of Union Law (the “Directive”). The Directive introduces a common EU regime for the protection of persons who report breaches of EU law, and sets out, among other things, procedures for reporting channels, follow up of reports of breaches, prohibition of penalisation and provisions in relation to confidentiality. While many of the protections set out in the Directive were already provided for under the Act, an amendment to the legislation was required to implement all of the Directive’s provisions. The Protected Disclosures (Amendment) Act 2022 was signed into law on 21 July 2022 and commenced operation on 1 January 2023.

### 3. Purpose of This Document

The purpose of this document is to signal our commitment to protecting staff who raise concerns and to clearly set out the policy and procedures on Protected Disclosures in the Department of Agriculture, Food and the Marine (DAFM). This policy outlines the channels and procedures for reporting concerns to ensure that the protection provided by the Act is made available. A concern that is not reported may allow the alleged malpractice to continue, to the detriment of the Department.

There is no obligation on a staff member of DAFM to use the Protected Disclosures process to draw attention to suspected wrongdoing. They are free to raise a matter through the usual reporting structures. However, if the staff member intends the matter to be viewed as a protected disclosure, and dealt with as such, we ask that it is raised through the channels outlined in section 14.1 below.

The aims of this Policy are:

- a) To encourage all staff, both past and present, to report suspected wrongdoings as soon as possible, knowing that their concerns will be taken seriously, investigated where appropriate and that their confidentiality will be respected in the manner provided by the Act;
- b) To reassure workers that they can report relevant wrongdoings without fear of reprisal;
- c) To provide all staff with guidance as to how to raise those concerns;
- d) To provide recipients of disclosures with guidance as to how these concerns should be handled.

These procedures refer to internal reporting in accordance with the provisions of Section 6 of the Act only and nothing contained in these procedures can serve to deprive any person of their rights under the Act.

## 4. To Whom Does this Policy Apply?

This policy is applicable to all workers in the Department of Agriculture, Food and the Marine and also provides protections for those beyond the usual definition of employees. The term “worker” covers all persons who are employees whether permanent or temporary, contractors, trainees, agency workers, volunteers, board members, job candidates or any other persons in receipt of payment for service to the Department. Retired employees or ex-workers may also make a disclosure under this policy.

For the purposes of the Act (as amended), a worker is a quite broadly defined term and taken to mean an individual who has acquired information on a relevant wrongdoing in a work-related context.

A worker is defined by the Act as

- a) an individual who is or was an employee,
- b) an individual who entered into or works or worked under any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertook to do or perform (whether personally or otherwise) any work or services for another party to the contract for the purposes of that party's business,
- c) an individual who works or worked for a person in circumstances in which
  - i. the individual is introduced or supplied to do the work by a third person, and
  - ii. the terms on which the individual is engaged to do the work are or were in practice substantially determined not by the individual but by the person for whom the individual works or worked, by the third person or by both of them,
- d) an individual who is or was provided with work experience pursuant to a training course or programme or with training for employment (or with both) otherwise than under a contract of employment,



- e) an individual who is or was a shareholder of an undertaking,
- f) an individual who is or was a member of the administrative, management or supervisory body of an undertaking, including non-executive members,
- g) an individual who is or was a volunteer,
- h) an individual who acquires information on a relevant wrongdoing during a recruitment process, and
- i) an individual who acquires information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process referred to in (h) above)

Employees of Agencies of this Department are required to report under their own organisation's policy.

## **5. Scope of this Policy**

An individual may voluntarily raise concerns regarding a very broad range of issues in the workplace. Some of these may only affect the individual raising the concern, while others may have broader and wider implications.

Making a report in accordance with the Protected Disclosures Act is referred to as "making a protected disclosure". A "protected disclosure" means a disclosure of "relevant information" made by a "worker" in the manner specified in the Act. The relevant information must, in the reasonable belief of the worker, tend to show one or more relevant wrongdoings and have come to the attention of the worker in a work-related context. These requirements are explained in more detail below. This policy relates to reporting of wrongdoings such as, for example, fraud or matters of safety. Wrongdoings are explained more fully below.

## **6. Mandatory Reporting**

Persons considering reporting under these procedures should, however, be aware that a distinction must be drawn between voluntarily made disclosures and legally based mandatory reporting requirements. The procedures contained in this document do not absolve any member of staff from any such mandatory reporting requirement to which they may become subject. Failure to comply with a legally based mandatory reporting requirement report may result in a breach of the law.

## **7. What Type of Disclosure is Not Covered?**

The 2014 Act is for disclosures of relevant wrongdoings (see below).

A matter is not a relevant wrongdoing if it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

Legal advisors are excluded from the provisions of this policy and the Act when disclosing certain information. Where a claim to legal professional privilege could be maintained in legal proceedings in respect of information that was disclosed to the advisor in the course of a person obtaining legal advice, any disclosure of such information by the legal advisor will not be a protected disclosure and will not be dealt with under this procedure.

Matters concerning interpersonal grievances exclusively affecting a worker (namely, grievances about interpersonal conflicts between the reporting person and another worker, or a matter concerning a complaint by a reporting person to, or about, his or her employer which concerns the worker exclusively) are not relevant wrongdoings, and will not be dealt with under this procedure. Such matters are dealt with under the Dignity at Work or grievance procedures.

Failure to comply with a legal obligation that arises solely under the worker's contract of employment or other contract where the worker undertakes to do or perform personally any work or services is not a relevant wrongdoing. Such matters are generally dealt with under the grievance policy or other applicable policy.

## **8. Protection from Penalisation**

The Department of Agriculture, Food and the Marine is committed to fostering an appropriate environment for addressing concerns and supporting workers in 'speaking-up' about potential wrongdoing in the workplace and to providing the necessary support for workers who raise genuine concerns. A worker who makes a protected disclosure is protected from penalisation. In accordance with the Act, "Penalisation" means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker, and includes:

- (a) suspension, lay-off or dismissal,
- (b) demotion, loss of opportunity for promotion or withholding of promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) coercion, intimidation, harassment or ostracism,
- (f) discrimination, disadvantage or unfair treatment,
- (g) injury, damage or loss,
- (h) threat of reprisal,
- (i) withholding of training,
- (j) a negative performance assessment or employment reference,

- (k) failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanent employment,
- (l) failure to renew or early termination of a temporary employment contract,
- (m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,
- (n) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry,
- (o) early termination or cancellation of a contract for goods or services,
- (p) cancellation of a licence or permit, and
- (q) psychiatric or medical referrals

It should be noted that this list is not exhaustive. Any form of penalisation is prohibited and the fact that a type of behaviour or penalisation is not specifically referenced in the Act does not mean that it cannot be viewed as penalisation under the Act.

Any worker who has a reasonable belief that the information contained in their disclosure tends to show a wrongdoing (see section 5) will be protected against penalisation even if the worker's concern is ultimately misguided or mistaken.

However, a disclosure made in the absence of a reasonable belief (see below) will not attract the protection of the Act and this may result in disciplinary action against the Discloser. In addition, disclosure of an alleged wrongdoing does not confer any protection or immunity on a worker in relation to any involvement they may have had in that alleged wrongdoing.

## **9. Principles underlying this Policy**

This policy document relates to the reporting of serious wrongdoing as defined in the Protected Disclosures Act. It is not intended to be a substitute for normal

day to day operational reporting. Where a concern is raised or a disclosure is made under this policy, the following principles will apply:

1. The concern will be treated seriously and investigated where considered appropriate, and in accordance with the relevant policy and procedure for such an investigation.
2. In accordance the Act, where an investigation takes place, every appropriate step will be taken to safeguard the identity of the worker raising the concern.
3. The worker raising the concern will be advised on how the issue has been addressed, including the outcome of any investigation, taking into account confidentiality and other issues (explained below);
4. The worker raising the concern 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.
5. The Department will take all reasonable steps to treat disclosures that are made in accordance with this Policy, in a confidential and sensitive manner. The Department will not disclose the worker's identity without their consent unless one of the exceptions in the 2014 Act applies (see Section 28 below for further details on "Confidentiality/Protection of Identity").

## **10.What is Relevant Information?**

A Protected Disclosure is defined in the Protected Disclosures Act 2014 as a disclosure of relevant information related to a relevant wrongdoing made by a worker in the manner specified under the Act. For the purposes of the Act, information is "relevant" if:

- a) In the reasonable belief of the worker it tends to show one or more 'relevant wrongdoings'; and

- b) It came to the attention of the worker in connection with the worker's employment. For instance, a disclosure will not be protected if it relates to matters in someone's personal life outside of, and unconnected with, the workplace.

It should be noted that there is no onus on the reporting person to hunt for evidence to support their allegation.

## **11.What is Relevant Wrongdoing?**

A protected disclosure involves the disclosure of relevant information which, in the reasonable belief of the worker making the disclosure, shows that one or more of the following relevant wrongdoings, as described in the Act, has been committed or is likely to be committed:

- a) that an offence has been, is being or is likely to be committed,
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur,
- d) that the health or safety of any individual has been, is being or is likely to be endangered,
- e) that the environment has been, is being or is likely to be damaged,
- f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement,
- h) that a breach of specified EU law set out in the Directive has occurred, is occurring or is likely to occur, or

- i) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Ireland or elsewhere and whether the law applying to it is that of Ireland or that of any other country or territory.

Reports may also be made by workers of wrongdoing in respect of other relevant employment-specific or profession-specific obligations, which may not be covered by the definition of wrongdoing in section 5 of the Act and may be covered by other statutory protection for reports.

Genuine concerns about possible wrongdoing should be raised by workers at the earliest opportunity after becoming aware of the potentially relevant wrongdoing, and in an appropriate way.

## **12. Important Notes about Disclosures**

A protected disclosure should contain information which tends to show wrongdoing. The ordinary meaning of disclosing “information” is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation on the basis of a suspicion that is not founded on facts and prima facie evidence.

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so.

Persons making a protected disclosure should frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences.

All a worker should do is disclose what they consider to be an alleged wrongdoing based on a reasonable belief that it has, is or will occur.

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

Once a protected disclosure has been made in accordance with the Act, it may be not possible for a reporting person to withdraw the disclosure, as an assessment or investigation may be required on the basis of the initial disclosure. Employees are required to provide reasonable cooperation to their employers as part of any internal process. Reporting persons are also required under the Act to co-operate with a prescribed person, the Commissioner or a person to whom a report is transmitted to such extent as may reasonably and lawfully be required for the purposes of the Act. Where co-operation is withdrawn or the reporting person seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the provisions of the Act, to the greatest extent possible. Should the reporting person cease to co-operate with the protected disclosure process, this may make follow-up, including any investigation, more difficult.

### **13.Reasonable Belief**

The Act does not give protection where the Discloser does not have a reasonable belief about the matter which they are disclosing. Reasonable belief is not defined in the Act so the words are understood to have their ordinary, plain language meaning. For the purposes of these procedures, a belief would



be considered reasonable if it is logical and rational, that given the same facts an objective person would arrive at the same or a similar belief.

The term 'reasonable belief' does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds. It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what they have observed. A worker may not know all the facts of the case and as noted above, the worker is not obliged or entitled to find proof of their suspicion. In such a case the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.

The motivation for making the disclosure or the disciplinary record of the discloser is not relevant when determining whether or not it is a disclosure protected by the 2014 Act. Focus must be on the reported facts. However, a disclosure made in the absence of a reasonable belief will not attract the protection of the 2014 Act and this may result in disciplinary action against the Discloser.

No worker will be penalised simply for getting it wrong, so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

## **14. How to Make a Disclosure**

A worker must make a disclosure in the manner set down in the Act to gain the protections of the Act.

This policy and procedure relates to disclosures within the Department from workers engaged by the Department (see 14.1 below). The recommended Protected Disclosure form to be used when making such a disclosure can be found in Appendix A. We encourage workers to make disclosures to the Department using the reporting channels outlined below, so that the

Department can assess the disclosures as soon as possible and take appropriate action to deal with any issues arising.

### **14.1. Disclosure within the Department**

Any worker who possesses information, which came to their attention in connection with their employment in the Department and which they reasonably believe tends to show one or more of the serious wrongdoings, as set out in Section 5 of this Policy, may disclose the relevant information to the following under Section 6 of the Act:

- a) The DAFM Designated Person - Head of Corporate Affairs (CAD) (Principal Officer or equivalent);
- b) The independent service engaged for this purpose – The Department has engaged Resolve Ireland to provide an independent confidential recipient service;

*(Contact details for all the above parties can be found in Appendix B)*

The above parties are referred to as “Recipients” later in this policy.

The Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out in 14.2 below.

### **14.2 Disclosure Outside the Department**

#### **14.2.1 Other Responsible Person**

Where a worker reasonably believes that the alleged wrongdoing relates to the conduct of a person other than their employer, or to something for which

another person has legal responsibility, then the worker can make the disclosure to the relevant person in that other organisation.

#### 14.2.2 A Prescribed Person

Certain persons are prescribed by Statutory Instrument No. 339 of 2014 (as amended) to be the recipient of disclosures ("Prescribed Persons"). Typically these are positions in Regulatory Bodies within specific sectors. A worker may make a disclosure to a Prescribed Person under Section 7 of the Act if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed. However, the worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

The following link provides a list of prescribed persons in line with the latest legislation relating to Protected Disclosures.

<https://www.gov.ie/prescribed-persons>

#### 14.2.3 The Protected Disclosures Commissioner

The Protected Disclosures (Amendment) Act 2022 created the Office of the Protected Disclosures Commissioner. The Commissioner has certain powers and responsibilities under the Act. The Commissioner's primary duty is to refer any reports received under the Act, to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified). Only as a last resort should the Commissioner directly follow-up on a report.

The Commissioner may receive disclosures by means of external reporting channels, which must meet the same criteria as the external reporting channels for prescribed persons. The Commissioner may also receive disclosures which have been transmitted onwards from Government Ministers under Section 8 of the Act.

For more information on the Office of the Protected Disclosures Commissioner please follow the link below to Part 2A of the amended 2014 Act.

[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2022/act/1/section/2a)

#### **14.2.4 A Legal Adviser**

Under Section 9 of the Act, a disclosure can be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in Section 6 of the Trade Union Act, 1941).

#### **14.2.5 Alternative External Disclosures (in very limited circumstances)**

It is preferable in most circumstances to disclose to the line manager or, if that is not appropriate, to use one of the disclosure options set out above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options described above. There are stringent requirements for alternative external disclosures under Section 10 the Act to qualify as protected disclosures [[Protected Disclosures \(Amendment\) Act 2022, Section 13 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2022/act/1/section/13)].

#### **14.3 A Minister of the Government**

If a worker is or was employed in a public body, they may make a disclosure to the Minister on whom any function related to the public body is conferred or imposed by or under any enactment, under Section 8 of the Act. There are specific guidance notes for Ministers who receive disclosures.

In order to make a disclosure to a relevant Minister, the worker must reasonably believe that the information disclosed tends to show one or more relevant wrongdoings; and one or more of the following must also apply:

- a) The worker has previously made a disclosure of substantially the same information to their employer, other responsible person, prescribed person, or relevant Minister, as the case may be, but no feedback has been provided to the worker in response to the disclosure within the period allowed, or, where feedback has been provided, the reporting person reasonably believes that there has been no follow-up or that there has been inadequate follow-up;
- b) The worker reasonably believes the head of the public body concerned is complicit in the relevant wrongdoing reported;
- c) The worker reasonably believes that the disclosure contains information about a relevant wrongdoing that may constitute an imminent or manifest danger to the public interest, such as where there is an emergency situation or a risk of irreversible damage.

To ensure that the relevant Minister is aware of the worker's intention, it is recommended that the worker specify when making a disclosure under this channel that it is a disclosure to the named Minister under section 8 of the Protected Disclosures Act 2014. Disclosures received by Ministers are required to be forwarded by Ministers to the Commissioner

All reports, including all anonymous reports, received via the Ministerial reporting channel must be transmitted to the Protected Disclosures Commissioner within 10 calendar days of receipt.

The email address for disclosures to the Minister in the Department is in Appendix C of this Policy. Any disclosures to the Minister via that channel will be dealt with in line with the obligations in section 8 of the 2014 Act, as set out in this section 14.3.

## **15. Contents of a Disclosure**

The Department recommends that the disclosure be submitted on the template at Appendix A. Irrespective of how the disclosure is submitted, it should include the following at a minimum:

- a) Clarification that the disclosure is being made under the Protected Disclosure Act 2014 or this Policy;
- b) The Discloser's name, position in the organisation, place of work and confidential contact details;
- c) Relevant information in respect of the relevant wrongdoing (what is occurring/has occurred and how) along with any supporting information;
- d) The date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- e) Clarification as to whether or not the wrongdoing is still ongoing;
- f) The name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed);
- g) Notice as to whether the wrongdoing has already been disclosed and if so to whom, when and what action was taken; and
- h) Any other relevant information.

Please note that workers making a protected disclosure (the Discloser) should frame it in terms of information that has come to their attention rather than seeking to draw conclusions about particular individuals or specific offences. Anecdotal evidence may not be considered strong enough to undertake an investigation.

## **16. Verbal Disclosure**

As may be appreciated, a written disclosure is preferred to a verbal disclosure as there is less scope for misunderstandings arising. However, if you wish to make a verbal disclosure under this policy you may do so using the reporting channels set out in section 14.1 above.

## **17. Sufficient Information**

Please remember that the detail of the disclosure, whether written or oral, should be sufficient to enable a person without prior knowledge of the circumstances to understand the issue.

Disclosures should be submitted to the appropriate person as outlined in section 14.1 above. If a disclosure is made to another person, other than a person referred to in 14.1 above, then that recipient should contact the Designated Person referred to in 14.1 above and discuss next steps in dealing with the disclosure.

## **18. Anonymous Disclosures**

There is a distinction between an anonymous disclosure (where identity is withheld by the Discloser) and confidential disclosures (where identity is protected by the Recipient). Anonymous disclosures made by workers are not excluded from the protection of the 2014 Act. Reports or concerns expressed

anonymously will be acted upon to the extent that this is possible, given the constraints in obtaining further information on the alleged wrongdoing.

The Recipient / Designated Person will consider anonymous reports based on an assessment of the details provided and exercise their discretion to determine appropriate follow up action(s). In exercising this discretion the factors that may be taken into account would include:

- a) The seriousness of the issues raised;
- b) The information provided and the credibility of the disclosure based on other available information;
- c) The likelihood of confirming the allegation as credible from witnesses or other sources of information.

Disclosers should note, however, that important elements of these Procedures (e.g. keeping the Discloser informed and protecting a Discloser from penalisation) may be difficult or impossible to apply unless the worker is prepared to identify themselves. Also, it may be easier to protect the confidentiality of a Discloser when making necessary enquiries if the Recipient/Investigator is aware of their identity.

Finally, a Discloser cannot obtain redress for penalisation under the 2014 Act without identifying themselves.



## **19.Guidance on the Role of the Designated Person / Recipient**

The Designated Person / Recipient plays a key role in the Protected Disclosures Process. As guidance, the following sections set out their responsibilities.

### **19.1 Time Limits for Recipients**

It is difficult to set time limits for the work of a Recipient. This is because some issues may be relatively straightforward while others may be more complex. Additionally, the need to maintain confidentiality may require a sensitive or subtle approach. However, Recipients must discharge their role promptly to avoid a Discloser believing that their disclosure is not being taken seriously. Thus, as a guideline a Discloser should expect an update on the initial assessment stage (or appropriate update) within 10 working days of the Recipient having received the disclosure. If there are to be delays, the Recipient should keep the Discloser updated.

### **19.2 Acknowledgement of Disclosure**

The Recipient/Designated person should acknowledge receipt of the disclosure (or arrange for such acknowledgement to be sent) in writing within 7 days.

If the disclosure is made in verbal form it should be recorded in some manner by the Designated Person/Recipient. The Discloser should be given an opportunity to review, sign or approve such a record so that there is no misunderstanding as to the details of the concern being raised. However, the Discloser does not have to sign/approve the record and the Designated Person/Recipient can take this fact into account during the initial assessment.

### 19.3 Initial Assessment

The Designated Person/Recipient and any other person to whom the disclosure is referred in the performance of that person's duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the Discloser.

The Designated Person/Recipient will undertake an initial evaluation of the disclosure including, if necessary, contacting the Discloser for additional information. The disclosure will be evaluated and consider if it appears that:

- a) the potential wrongdoing is a 'relevant wrongdoing' within the meaning of the Act;
- b) the potential wrongdoing was/ is in connection with the worker's work; and,
- c) there is prima facie evidence that a relevant wrongdoing may have occurred

Following the evaluation, they will advise the Discloser, in writing, as to whether, in their view, the concern that was raised qualifies as a disclosure that should be dealt with under this policy and procedure. In this regard, the Designated Person / Recipient will determine whether there is prima facie evidence that a relevant wrongdoing may have occurred and, as part of this process, the Designated Person / Recipient should explain the reasons for their decision. This is particularly important where the concern is not deemed to be a disclosure that should be dealt with under this policy/procedure and especially in situations where the matter should be pursued through a different avenue, for instance the Dignity at Work policy. By explaining their reasons to the Discloser, the Designated Person/Recipient may be able to clarify any misunderstanding or reassure the Discloser that their concern was looked into and avoid them believing that they need to raise the matter elsewhere. It is also possible that the Designated Person/Recipient may be able to resolve the matter by agreed action without the need for an investigation or other formal process.

If following the initial assessment, the Designated Person decides that there is no prima facie evidence that a relevant wrongdoing may have occurred or that it relates solely to an interpersonal grievance (i.e. a complaint exclusively affecting the Discloser), the process is closed, or the Discloser is referred to another applicable procedure, such as the Grievance Procedure. The Discloser will be informed in writing of this action as soon as practicable, and the reasons for doing so.

A determination that a disclosure should be dealt with under this policy/procedure or that there is prima facie evidence that a relevant wrongdoing may have occurred is not a finding that the disclosure is a protected disclosure or that wrongdoing has taken place. The investigation of wrongdoing is separate. The Designated Person will determine appropriate action following the initial assessment and, if investigation is appropriate, will refer the protected disclosure to the relevant area for investigation as appropriate.

Please note that the Designated Person/Recipient will be basing their decision on the information they have received from the Discloser. It is possible that when the matter is subject to further scrutiny it may become apparent that it does not meet the criteria for protection under the Act and/or that the matter should be pursued through a different policy.

## 20. Records

The Recipient/Designated Person should formally record all actions they took and the reasons for any decisions they made. They should also note that they communicated their decision to the Discloser and where the decision was not communicated in writing, should set out what and how they conveyed to the Discloser. These records should be retained for 5 years and further information on records is contained in section 16C of the 2014 Act [[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](#)].

After the initial assessment stage, records must be kept in the manner appropriate to any resultant investigation or other process that takes place.

## **21.Review of Outcome of Initial Assessment**

Should the Discloser not accept the decision of the initial assessment stage, they may seek a review of the decision. The appeal should be addressed to the Head of Corporate Affairs Division or an alternative as designated in the decision letter. The appeal will be assigned at ASG level by the Head of Corporate Affairs Division (or alternative), where the assigned ASG had no involvement in the initial assessment. Appeals against the decision must be lodged in writing within 10 working days of the date on which the original decision was communicated to the Discloser. The form at Appendix A can also be used for this purpose.

The Discloser must inform the Head of Corporate Affairs Division (or alternative) that the matter has already been the subject of an initial assessment and explain the reasons why they believe that the matter requires re-examination. The assigned ASG will undertake an independent evaluation of the outcome following which they will advise the Discloser and the person who undertook the initial assessment no later than 10 working days after receipt of the appeal documents by the assigned ASG (unless there are extenuating circumstances) as to whether a different outcome is appropriate. The role of the assigned ASG will not generally be to re-investigate the matter in question but to address the specific issues the Discloser feels have received insufficient consideration.

The decision of the assigned ASG will be final and no further internal appeal will be available.

The assigned ASG must maintain records to the same extent as the person undertaking the initial assessment.

## **22.Actions Following Initial Assessment**

Where the Recipient / Designated Person determines that there is prima facie evidence that a relevant wrongdoing may have occurred, there is an obligation to take appropriate action to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned. In many cases, an investigation may be required following a disclosure. If that is the case, the matter must be referred to the Secretary General (or an official nominated by them for the purpose) who may arrange for an internal investigation and report, or who may refer the matter to an outside investigator or appropriate body.

The Discloser cannot prevent the Department from proceeding with any such investigations the Department deems appropriate.

## **23. Investigations**

It should be noted that there is no specific provision for investigations to be undertaken under the Protected Disclosures legislation. Where investigations are warranted, they will be conducted under the appropriate existing policy or procedure where such exists.

Any investigation arising as a consequence of a disclosure will, as with all other investigations, be carried out in a manner which is fully consistent with existing investigatory procedures which embody the principles of objectivity, natural justice and fair procedures.

It is not possible to lay down precise timescales or steps required for investigations, as this will depend on the nature of the issues raised. Without

affecting the quality or depth of the investigation all reasonable speed will be taken to bring any investigation arising from the making of a disclosure by a staff member to a conclusion as speedily as possible in all the circumstances of the case.

If, following the investigation into the matter, wrongdoing is found to have occurred, the matter will be referred to the Personnel Officer with a view to considering whether disciplinary proceedings ought to be pursued against the person concerned. Similarly, if no wrongdoing is found to have occurred, and the discloser is considered not to have had a reasonable belief in making the allegation of wrongdoing, disciplinary proceedings may also be considered following a referral to the Personnel Officer.

## **24. Feedback**

Feedback will be provided to the reporting person within a reasonable time period and no later than 3 months after the initial acknowledgement of the report.

A reporting person can request the Designated Person, in writing, provide further feedback at 3 month intervals until the process of follow-up is completed.

Any feedback is provided in confidence and should not be disclosed by the reporting person other than:

- (a) as part of the process of seeking legal advice in relation to their report from a solicitor or a barrister or a trade union official; or
- (b) making a further report through this or another reporting channel provided for under the Act (see next section).

Feedback will include information on the action taken or envisaged to be taken as follow-up to that report and also the reasons for such follow-up.

Feedback will not include any information that could prejudice the outcome of an investigation or any other action that might follow.

Feedback will not include any information relating to an identified or identifiable third party. In particular, feedback will not include any information on any disciplinary process involving another worker. Such information is confidential between the employer and the worker concerned.

If the follow-up process determines that no relevant wrongdoing has occurred, the reporting person will be informed of this.

If no further action is required to be taken, the reporting person will be informed of this.

The final outcome of an investigation triggered by the report will generally be communicated to the reporting person, subject to any legal restrictions concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation or reasonable grounds.

## **25. Appeals of Investigations**

The Protected Disclosures legislation does not provide the Discloser with any right to appeal the outcome of an investigation. Therefore, appeals against the outcome of an investigation will be allowed only where they are provided for within the terms of the specific policy and procedure under which the case was heard or the investigation took place. This will represent a final internal appeal on the matter (see appendix E: Appeals Procedures).

## **26.Claims of Penalisation**

The Department will not tolerate, condone or permit penalisation of workers who make a Protected Disclosure or a disclosure where there was a reasonable belief (see above). The 2014 Act provides specific remedies for workers who are penalised for making a disclosure which has been accepted as a Protected Disclosure. Penalisation means any act or omission that affects a worker to the worker's detriment (see section 3 above).

It will be considered a serious disciplinary matter if anyone penalises, or threatens penalisation against, a worker for having made a protected disclosure.

Workers who believe they have been the subject of penalisation as a consequence of raising a Protected Disclosure should make a complaint, in writing, to the Personnel Officer in the first instance. The complaint should make reference to the Protected Disclosure previously raised, the form the alleged penalisation has taken and the reasons for their belief that there is a link between the two events.

The Personnel Officer will arrange for an HR investigation of the alleged penalisation to take place adhering to the rules of objectivity, natural justice and fair procedures. If necessary, there will be appropriate action taken in respect of anyone who engaged in the penalisation. The findings of the investigation will be communicated in writing to the worker concerned. The Personnel Officer should notify the Head of CAD so that the allegation and outcome can be recorded statistically.

The confidentiality provided by this policy also extends to processing complaints of penalisation.



## **27. Appeals Regarding Outcome of Claims of Penalisation**

If the worker is not satisfied with the outcome of the investigation relating to their complaint of penalisation, they may appeal to one of the Recipients listed in Appendix B, who was not involved in the original case. This appeal should be made in writing within 10 working days of receipt of the outcome, clearly stating the reasons for the appeal. The appropriate Recipient will undertake a review of the relevant aspects of the outcome and arrive at a decision. This outcome represents the Discloser's final internal appeal on the matter.

## **28.External Protections**

There are external options, for instance through the Workplace Relations Commission, for workers who feel that they have been unfairly penalised. However, these are matters outside the scope of this Policy.

## **29.Confidentiality/Protection of Identity**

As stated above, the Department will take all reasonable steps to treat disclosures made in accordance with this Policy, in a confidential and sensitive manner. The Department will not disclose information that might identify the worker who made the disclosure without the discloser's explicit consent save where this is allowed by the exceptions in the 2014 Act.

The 2014 Act provides for certain exceptions where a reporting person's identity or information that could identify the reporting person can be disclosed with or without the reporting person's consent. These are:

- (a) Where the disclosure is a necessary and proportionate obligation imposed by EU or national law in the context of investigations or judicial proceedings, including safeguarding the rights of defence of persons connected with the alleged wrongdoing;

- (b) Where the person to whom the report was made or shared shows they took all reasonable steps to avoid disclosing the identity of the reporting person or any information that could identify the reporting person;
- (c) Where the person to whom the report was made or shared reasonably believes disclosing the identity of the reporting person or information that could identify the reporting person is necessary for the prevention of serious risk to the security of the State, public health, public safety or the environment; and
- (d) Where the disclosure is otherwise required by law.

Where disclosure of a reporting person's identity or information that could identify a reporting person under one or more of these exceptions, the reporting person will be notified in advance, unless such notification would jeopardise:

- The effective investigation of the relevant wrongdoing reported;
- The prevention of serious risk to the security of the State, public health, public safety or the environment; or
- The prevention of crime or the prosecution of a criminal offence.

Separate to the situations described above where identification of the Discloser is formally considered, Disclosers who are concerned that their identity is not being protected should notify the person investigating their disclosure. Such notifications will be assessed and/or investigated and appropriate action taken where necessary.

### **30. Additional Support**

The Civil Service Employee Assistance Service (CSEAS) provides an internal Employee Assistance Programme to Civil Service staff. The Service is a work-based professional service which is designed to assist employees manage/resolve work-related and personal difficulties which, if left unattended may adversely affect attendance, work performance and quality of life. This may be a useful resource if issues surrounding the Protected Disclosure process are giving rise to personal difficulties such as stress.

The website <https://www.cseas.per.gov.ie/> has further information.

### **31. Publication**

A summary report on all protected disclosures will be included in the Department's Annual Report. This will be provided by the Corporate Affairs Division (CAD) arising from the information supplied by Recipients, investigators etc. during the year. This report will not identify any parties to a protected disclosure process. A Report must be made to the Minister not later than the 1st March in each year, in respect of the immediately preceding calendar year in a form which does not enable the identification of reporting persons or persons concerned. Further information on the information to be provided in the report is contained in section 22 of the 2014 Act [[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](#)].

### **Oversight**

The Head of Corporate Affairs must ensure that the Department adheres to the provisions of the Protected Disclosures Act. This may involve seeking updates from Recipients, potential recipients, investigators or anyone else with a role in the processes set out in this document.

The Head of Corporate Affairs will submit an annual report to the Management Board, including general details of all disclosures received during the previous year as well as the progress made. The Board will review this report and as necessary, make recommendation(s) to or seek additional information in relation to the operation of this Policy.

### **32. Further information /Review of Guidance**

This Policy will be reviewed following the publication of any instructions or guidance from the Department of Public Expenditure & Reform, or at minimum of three year intervals, or when required by the Management Board of the Department.

The Protected Disclosures (Amendment) Act 2022 can be downloaded at:

[Protected Disclosures \(Amendment\) Act 2022 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2022/act/12/enactment/index.html)

This policy document relates to the reporting of serious wrongdoing of the nature set out above only and is not intended to act as a substitute for normal day to day operational reporting. Neither is it intended to act as a substitute for existing grievance procedures and the Dignity at Work policy all of which remain in place ([Grievance - hr.per.gov.ie](https://hr.per.gov.ie/grievance)) and [Dignity at Work Policy - hr.per.gov.ie](https://hr.per.gov.ie/dignity-at-work))

## Appendix A

### DAFM Protected Disclosures Policy Reporting Form

The Department of Agriculture, Food and the Marine welcomes the reporting of disclosures under the Protected Disclosures Act 2014.

Before completing this form, you should carefully read the full policy to ensure that this is the appropriate method for reporting your concern or disclosure.

Reports should be submitted by email to one of the recipients listed in Appendix B or C.

<b>Name of Worker reporting the concern</b>  (Anonymous reports will be considered but are not encouraged because the Department may not be able to investigate without additional details)	
<b>Contact phone number</b>	
<b>Email Address</b>	
<b>Division/Grade/Work Location</b>	
<b>Date of wrongdoing</b>	
<b>Is wrongdoing continuing?</b>	

<p><b>Details of Concern/Disclosure including dates, if applicable</b></p> <ul style="list-style-type: none"> <li>• Care should be taken to only include the name(s) of individual(s) directly relevant to the report.</li> <li>• Details should be clear and precise and relate specifically to the concern/disclosure.</li> <li>• There should be a clear statement as to what your concern is (rather than a list of event).</li> <li>• Details should be enough to enable a person without prior knowledge to understand the issue.</li> </ul>	
<p><b>as the concern been reported previously?</b></p> <p>(If it has been, please specify: when; to whom; the outcome; and the reference number previously allocated)</p>	
<p><b>Any other relevant information</b></p>	

## Appendix B

### Contact Details for the DAFM Recipients

#### Independent Confidential Recipient

Resolve Ireland which is the Independent Ombudsman for DAFM can be contacted 24/7:

Email: [dafmconfidentialrecipient@protecteddisclosure.ie](mailto:dafmconfidentialrecipient@protecteddisclosure.ie)

Phone: 01-2964146

Post: DAFM Independent Confidential Recipient, 11b Ashleigh Retail Centre, Castleknock Village, Dublin 15, D15 VHT4

File Online: [www.protecteddisclosure.ie](http://www.protecteddisclosure.ie) User Name – DAFM, password – DAFM2016

#### Contact Details for Internal Disclosures

[ProtectedDisclosures@agriculture.gov.ie](mailto:ProtectedDisclosures@agriculture.gov.ie) (manned by the Head of Corporate Affairs)

## Appendix C

### Contact Details for the Disclosure through the Ministerial Channel:

[MinisterProtectedDisclosure@agriculture.gov.ie](mailto:MinisterProtectedDisclosure@agriculture.gov.ie) (manned by the Head of Corporate Affairs)



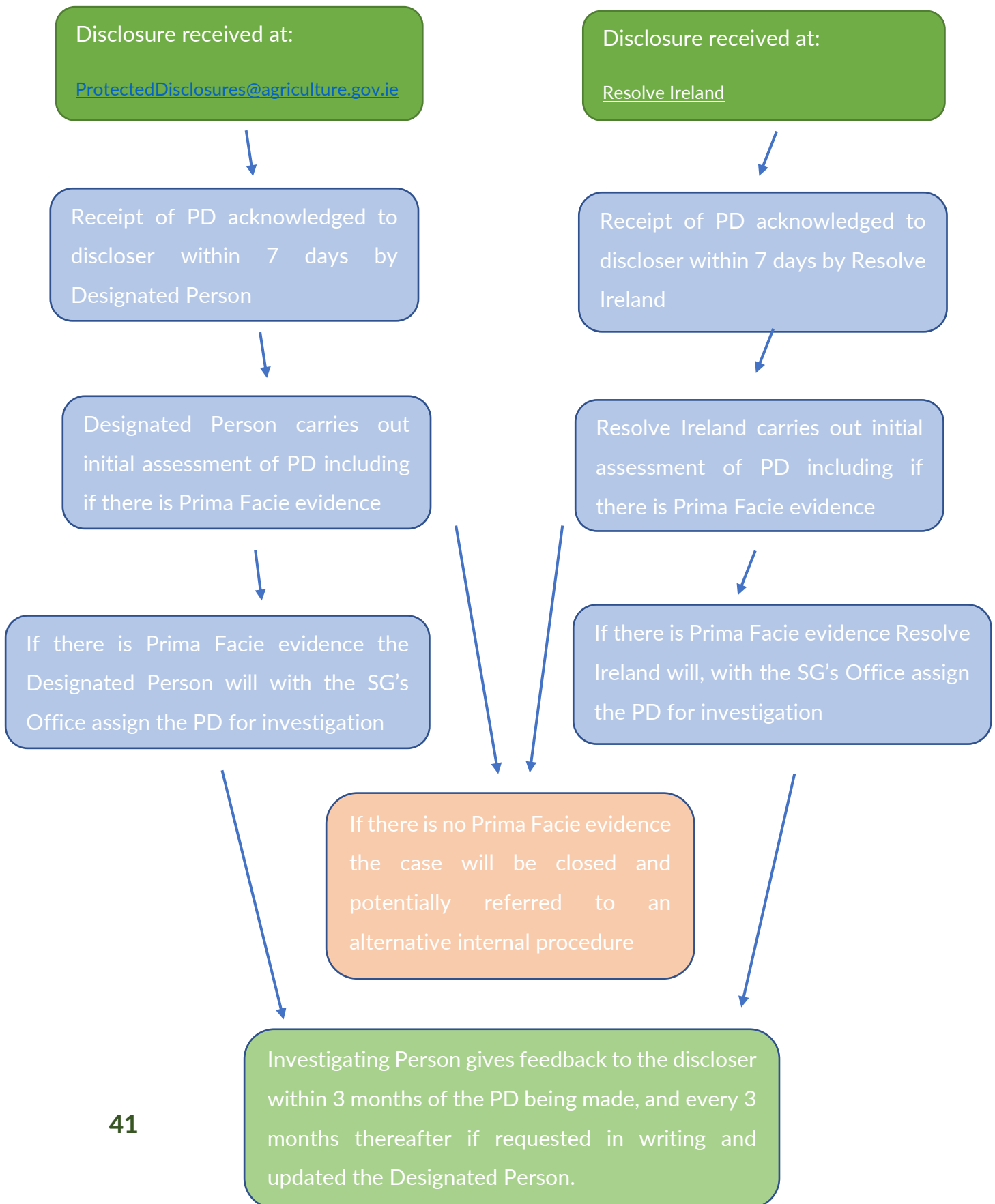
## Appendix D

Summary steps related to the processing of a protected disclosure.

1. Acknowledgment of receipt of disclosure within 7 days of receipt.
2. Initial assessment by the Recipient/Designated Person (or designate) to determine whether there is prima facie evidence that a relevant wrongdoing may have occurred and to determine appropriate action / next steps in the process.
3. Determination of the wishes of the discloser in relation to protection of identity.
4. Advice on support available from employee assistances programme as required.
5. Referral to appropriate person for appropriate action, ensuring that this person has not been the subject of any of the content of the disclosure. This principle applies at all stages of the process
6. Initial examination of the issues by or on behalf of appropriate person to determine the appropriate next steps.
7. If an investigation is required, the appropriate person commissions the investigation (internal or external). This may require terms of reference for the investigation.
8. On completion of the required investigation or other appropriate process a report to be completed which outlines the nature of the issues involved and how they should be addressed and any consequential actions.
8. Information to be provided to the Designated Person by relevant appropriate person /commissioning manager in relation to how the protected disclosure was addressed and in relation to the implementation of any recommendations.
9. Feedback to the discloser of relevant information related to the process and outcome, where this is appropriate, and in line with the feedback process outlined above.
10. Carrying out of reviews as provided for in the procedure, if required.
11. Records in relation to each disclosure should be retained in line with obligations of this Policy and the 2014 Act.
12. The Designated Person will require documentation to confirm for each protected disclosure that the matter has been examined, that the issues raised, if they have been established, have been addressed and that an appropriate response has issued to the discloser.
13. Given the diverse nature of disclosures a timescale for the processing a disclosure is not being prescribed. However each disclosure should be dealt with as expeditiously as possible in the circumstances of the particular case.

## Protected Disclosure Channels

### Internal Disclosures – Section 6



## Non-Internal Disclosure Channels

**A worker can make a disclosure outside of the Department. However, a higher standard applies, as set out in the Policy.** If a disclosure is not in compliance with the Act, the protections the Act offers will not be available.

The Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as summarised below.

ROUTE	ACT REFERENCE	THIS DOC REFERENCE
Prescribed Person	Section 7	Section 14.2.2
Legal Adviser	Section 9	Section 14.2.4
Other	Section 10	Section 14.2.5

Ministerial Channel	Section 8	Section 14.3
<a href="mailto:MinisterProtectedDisclosure@agriculture.gov.ie">MinisterProtectedDisclosure@agriculture.gov.ie</a>		

Commissioner	Section 10	Section 14.2.3
<a href="https://www.opdc.ie/contact/">https://www.opdc.ie/contact/</a> To report a wrongdoing - <a href="mailto:disclosures@opdc.ie">disclosures@opdc.ie</a>		