Office of the Whistleblower Bill [HL]

RUNNING LIST OF ALL

AMENDMENTS IN COMMITTEE OF THE WHOLE HOUSE

Tabled up to and including

22 July 2021

[Sheets HL Bill 7(*a*) to (*b*)]

Clause 3

LORD HUNT OF KINGS HEATH

Page 2, line 2, at end insert—

"(h) ensure the duties on employers and relevant bodies prescribed under sections (*Prescribed persons' duty to enable reporting and to act on disclosures of information*) and (*Employers' duty to enable reporting and to act on disclosures of information*) are upheld;

(i) administer civil penalties where they judge appropriate against employers or relevant bodies prescribed for breaches of their responsibilities under this Act;

(j) issue warning notices and redress orders to ensure that employers and prescribed persons fulfil their responsibilities under this Act;

(k) issue civil penalties where warning notices and redress orders are not complied with."

Member's explanatory statement
This amendment gives the Office of the Whistleblower powers to sanction an employer or prescribed person that has failed to adhere to the requirements under this Bill.

After Clause 3

LORD HUNT OF KINGS HEATH

Insert the following new Clause—

"Prescribed persons' duty to enable reporting and to act on disclosures of information

(1) The Office of the Whistleblower may require all relevant bodies prescribed, excluding members of Parliament, to—

After Clause 3 - *continued*

(a) establish reporting channels, which are secure and ensure confidentiality, for receiving and handling information provided by the person making a protected disclosure;
(b) keep confidential records of all protected disclosures made to them;
(c) give feedback to the person making a protected disclosure about the follow-up of the disclosure within a reasonable timeframe not exceeding three months or six months in duly justified cases;
(d) follow up on disclosures by taking the necessary measures to investigate, as appropriate, the subject-matter of the concerns;
(e) where the prescribed person receives a disclosure from another body under paragraph (d), take the necessary measures and investigate, as appropriate, the subject matter of the concerns; and
(f) act to preserve the confidentiality of the whistleblower.

(2) In cases under subsection (1)(c), the Office of the Whistleblower may require the prescribed person to issue the person making the disclosure with a reasonable explanation as to why the timeframe will be exceeded, three months after the disclosure.

(3) The explanation under subsection (2) may be reviewed by the Office of the Whistleblower in cases of dispute or query.

(4) Where the body prescribed is not competent to investigate the protected disclosure under subsection (1)(d), the Office of the Whistleblower may require them to inform the person making the protected disclosure.

(5) The Office of the Whistleblower may require a relevant body prescribed to publish on their websites in a separate, easily identifiable and accessible section at least the following information—
(a) the conditions under which persons making a protected disclosure qualify for protection under the Public Interest Disclosure Act 1998;
(b) the communication channels for receiving and following-up disclosures;
(c) the confidentiality regime applicable to disclosures;
(d) the nature of the follow-up to be given to reported concerns;
(e) the remedies and procedures available against retaliation and possibilities to receive confidential advice for persons contemplating making a disclosure; and
(f) a statement clearly explaining that persons making information available to the competent authority in accordance with this Part are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.”

Member’s explanatory statement
This new Clause gives the Office of the Whistleblower powers to set minimum legal standards that all prescribed persons must follow with regards to whistleblowing disclosures.

Insert the following new Clause—

"Consulting on the Public Interest Disclosure Act 1998: particular offences

For the purposes of section 3(b), the Office of the Whistleblower must have regard in particular to offences that do not have a public interest defence to the disclosure of information which, but for the lack of a public interest defence, would be a qualifying disclosure."

Member's explanatory statement
This amendment requires the Office of the Whistleblower, in conducting its review of whistleblowing law, to have particular regard to those offences that criminalise the disclosure of information that do not have a public interest defence.

Insert the following new Clause—

"Employers' duty to enable reporting and to act on disclosures of information

(1) The Office of the Whistleblower may require employers which—
- (a) have 50 or more employees;
- (b) have an annual business turnover or annual balance sheet total of £10 million or more; or
- (c) operate in the area of financial services or are vulnerable to money laundering or terrorist financing;

to establish internal channels and procedures for reporting and managing qualifying disclosures.

(2) The number of employees under subsection (1)(a) includes employees of all franchises, subsidiaries and associated employers as defined under section 231 of the Employment Rights Act 1996 (associated employers).

(3) Employers' procedures required by the Office of the Whistleblower may include—
- (a) channels for receiving the disclosures which are designed, set up and operated in a manner that ensures the confidentiality of the identity of the person making the disclosure and prevents access to non-authorised persons;
- (b) the designation of a senior person who has responsibility for the effectiveness of reporting channels and following up on disclosures, whose name and contact details are clearly communicated and accessible;
- (c) the designation of a person or department competent for following up on the disclosures;
- (d) diligent follow up to the disclosures by the designated person or department;
- (e) clear and easily accessible information regarding the procedures and information on how and under what conditions disclosures can be made externally to competent authorities including relevant bodies prescribed;
- (f) a comprehensive procedure for documenting whistleblowing concerns, and the actions taken as a result of each concern disclosed, including outcomes;

After Clause 3 - *continued*

(g) a system for recording the information in paragraph (f) which enables employers to identify patterns and enables assessment of effectiveness;

(h) signposting to sources of help for the person making the disclosure, including any staff or trade-union representative in place and external sources of advice; and

(i) training for all staff on how to make a disclosure.

(4) Notwithstanding any duty to third parties, unless a risk assessment identifies a serious risk of harm to any person, the Office of the Whistleblower must require employers—

(a) to inform the person making the disclosure that the report has been received, within seven days;

(b) to inform the person making the disclosure of all progress taken in response, including any action taken by a prescribed person, and where there has been no action, to explain in writing the reasons every 14 days until the matter is resolved; and

(c) within a reasonable timeframe, not exceeding three months following the disclosure, to provide substantive feedback about the follow-up to the disclosure and the impact of the disclosure.

(5) The Office of the Whistleblower must require employers to establish protective measures as soon after the disclosure as possible, to prevent detrimental treatment by the employer, the employer’s officer or agent, or any third party of someone who has made, is believed to have made, or is believed to have the intention of making a protected disclosure.

(6) Measures under subsection (5) include, but are not limited to—

(a) undertaking a risk assessment to identify and mitigate any risks of detrimental treatment to the person making the disclosure; and

(b) providing the person making the disclosure with a designated contact within the organisation, for the purpose of reporting any detrimental treatment.”

Member’s explanatory statement
This new Clause gives the Office of the Whistleblower powers to set minimum legal standards that employers must follow with regards to whistleblowing disclosures. The Office of the Whistleblower may specify the minimum legal standards employers must implement to facilitate whistleblowing. The Office of the Whistleblower must oblige employers to provide feedback on action they take in response to the disclosure, and introduce duties on employers to take reasonable steps with regard to detrimental treatment.