No. 26/1980:

OMBUDSMAN ACT, 1980

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FIRST SCHEDULE

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AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF AN OMBUDSMAN, AND FOR PURPOSES CONNECTED THEREWITH.

[14th July, 1980]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definitions.

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

"action" includes decision, failure to act and omission and cognate words shall be construed accordingly;
"civil servant" has the meaning assigned to it by the Civil Service Regulation Act, 1956;

"functions" includes powers and duties and a reference to the performance of a function includes, with respect to powers, a reference to the exercise of a power;

"local authority" means a local authority for the purposes of the Local Government Act, 1941;

"the Minister" means the Minister for the Public Service.

(2) Save where the context otherwise requires, references in this Act to any Department of State include references to the Minister of the Government having charge of that Department of State and to officers of that Minister of the Government and, if and so long as any of the functions of that Minister of the Government stand delegated to a Minister of State at a Department of State, include references to that Minister of State at a Department of State.

(3) Save where the context otherwise requires, references in this Act to a person (other than a Department of State) specified in the Schedules to this Act include—

(a) as respects the business and functions of the person, references to the Department of State in which any of them are comprised and to the Minister of the Government having charge of that Department of State, and

(b) as respects functions in relation to the person performed by a Department of State references to that Department of State and to the Minister of the Government having charge of it,

and to officers of those Ministers of the Government and members, officers and staff of the person and, if and so long as any of the functions of any of those Ministers of the Government stand delegated to a Minister of State at a Department of State, to that Minister of State at a Department of State.

Appointment and term of office of the Ombudsman.

2.—(1) There is hereby established the office of Ombudsman and the holder of the office shall be known as the Ombudsman.

(2) The appointment of a person to be the Ombudsman shall be made by the President upon resolution passed by Dáil Éireann and by Seanad Éireann recommending the appointment of the person.

(3) A person appointed to be the Ombudsman—

(a) may at his own request be relieved of office by the President.

(b) may be removed from office by the President but shall not be removed from office except for stated misbehaviour, incapacity or bankruptcy and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal,

(c) shall in any case vacate the office on attaining the age of 67 years.

(4) Subject to the provisions of this section, a person appointed to be the Ombudsman shall hold office for a term of 6 years and may be re-appointed to the office for a second or subsequent term.
(5) (a) Where a person who holds the office of Ombudsman is nominated either as a candidate for election to either House of the Oireachtas, the European Assembly or a local authority or as a member of Seanad Éireann or is appointed as a member of the European Assembly or a local authority, he shall thereupon cease to hold the office of Ombudsman.

(b) A person who is for the time being entitled—
   (i) under the Standing Orders of either House of the Oireachtas to sit therein,
   (ii) under the rules of procedure of the European Assembly to sit therein, or
   (iii) under the standing orders of a local authority to sit as a member thereof,

shall, while so entitled, be disqualified for holding the office of Ombudsman.

(6) A person who holds the office of Ombudsman shall not hold any other office or employment in respect of which emoluments are payable or be a member of the Reserve Defence Force.

(7) A person shall be not more than 61 years of age upon first being appointed to the office of Ombudsman.

Salary and pension.

3.—(1) There shall be paid to the holder of the office of Ombudsman the same remuneration and allowances for expenses as are paid to a judge of the High Court.

(2) (a) The Minister shall make and carry out, in accordance with its terms, a scheme or schemes for the granting of pensions, gratuities or other allowances on retirement or death to or in respect of persons who have held the office of Ombudsman.

(b) The Minister may at any time make and carry out, in accordance with its terms, a scheme or schemes amending or revoking a scheme under this section.

(c) A scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and if either such House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Functions of the Ombudsman.

4.—(1) The Ombudsman shall be independent in the performance of his functions.

(2) Subject to the provisions of this Act, the Ombudsman may investigate any action taken by or on behalf of a Department of State or other person specified in Part I of the First Schedule to this Act (being an action taken in the performance of administrative functions) where, upon having carried out a preliminary examination of the matter, it appears to the Ombudsman—

(a) that the action has or may have adversely affected a person (other than a Department of State or other person specified in the First or Second Schedule to this Act), and

(b) that the action was or may have been—
   (i) taken without proper authority,
   (ii) taken on irrelevant grounds,
(iii) the result of negligence or carelessness,
(iv) based on erroneous or incomplete information,
(v) improperly discriminatory,
(vi) based on an undesirable administrative practice, or
(vii) otherwise contrary to fair or sound administration.

(3) The Ombudsman shall not investigate an action unless—

(a) a complaint has been made to him in relation to the action by a person (other than a Department of State or other person specified in the First or Second Schedule to this Act), or

(b) it appears to him, having regard to all the circumstances, that an investigation under this section into the action would be warranted.

(4) The Ombudsman shall not investigate an action taken by or on behalf of a person specified in the Second Schedule to this Act.

(5) The Ombudsman may—

(a) having carried out a preliminary examination of the matter, decide not to carry out an investigation under this Act into an action in respect of which a complaint is made, or

(b) discontinue an investigation under this Act into such an action,

if he becomes of opinion that—

(i) the complaint is trivial or vexatious,
(ii) the person making the complaint has an insufficient interest in the matter, or
(iii) the person making the complaint has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if he has, has not been refused redress.

(6) It shall not be necessary for the Ombudsman to investigate an action under this Act if he is of opinion that the subject matter concerned has been, is being or will be sufficiently investigated in another investigation by the Ombudsman under this Act.

(7) An examination or investigation by the Ombudsman shall not affect the validity of the action investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the examination or investigation.

(8) In determining whether to initiate, continue or discontinue an investigation under this Act, the Ombudsman shall, subject to the provisions of this Act, act in accordance with his own discretion.

(9) Nothing in subsection (2) (a) or (3) (a) of this section shall be construed as prohibiting the investigation by the Ombudsman of—

(a) an action that, in the opinion of the Ombudsman, has or may have affected any individual other than in an official capacity, or
(b) an action the subject of a complaint to him by any individual acting other than in an official capacity.

(10) (a) The Government may, after consultation with the Ombudsman, by order amend the First Schedule to this Act and the said Schedule shall have effect in accordance with the terms of any orders under this paragraph.

(b) The Minister may, with the consent of any Minister of the Government to whom are assigned functions in relation to the person the subject of the amendment, by order amend the Second Schedule to this Act and the said Schedule shall have effect in accordance with the terms of any orders under this paragraph.

(c) Where an order is proposed to be made under this subsection, a draft thereof shall be laid before each House of the Oireachtas and if a resolution disapproving of the draft is passed by either such House within the next subsequent twenty-one days on which it has sat after the draft is laid before it, the order shall not be made.

Exclusions.

5.—(1) The Ombudsman shall not investigate any action taken by or on behalf of a person—

(a) if the action is one in relation to which—

(i) the person affected by the action has initiated in any court civil legal proceedings and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded,

(ii) the person affected by the action has a right conferred by or under statute (within the meaning of section 3 of the Interpretation Act, 1937), of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court), or

(iii) the person affected by the action has a right of appeal, reference or review to or before a person other than a Department of State or other person specified in Part I of the First Schedule to this Act,

(b) if the action relates to or affects national security or military activity or (in the opinion of the Ombudsman) arrangements regarding participation in organisations of states or governments,

(c) relating to recruitment or appointment to any office or employment in a Department of State or by any other person specified in the First Schedule to this Act,

(d) relating to or affecting the terms or conditions—

(i) upon and subject to which a person—

(a) holds any office, or

(b) is employed in a Department of State or by any other person mentioned in the First or Second Schedule to this Act,

(ii) of a contract for services,

(including the terms and conditions upon and subject to which pensions, gratuities or other superannuation benefits are payable to or in respect of the person or under the contract),

(e) if the action is one—

(i) taken in the administration of the law relating to aliens or naturalisation, or
(ii) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or disqualification imposed by a Court exercising criminal jurisdiction, or
(iii) taken in the administration of the prisons or other places for the custody of persons committed to custody by the Courts,

(f) in—
(i) a case where a complaint is made to the Ombudsman in relation to the action, if the complaint is not made before the expiration of 12 months from the time of the action or the time the person making the complaint became aware of the action, whichever is the later,
(ii) any other case, if the investigation is not commenced before the expiration of 12 months from the time of the action, or

(g) if the action is taken before the commencement of this Act;

Provided that the Ombudsman may investigate the action notwithstanding that it is one to which paragraph (a) of this subsection relates if it appears to the Ombudsman that special circumstances make it proper to do so.

Provided also that the Ombudsman may investigate the action notwithstanding that the investigation would contravene paragraph (f) of this subsection if it appears to the Ombudsman that special circumstances make it proper to do so.

(2) Notwithstanding subsection (1) of this section, the Ombudsman may investigate insurability and entitlement to benefit under the Social Welfare Acts, 1952 to 1979.

(3) Where a Minister of the Government so requests in writing (and attaches to the request a statement in writing setting out in full the reasons for the request), the Ombudsman shall not investigate, or shall cease to investigate, an action specified in the request, being an action of—

(a) a Department of State whose functions are assigned to that Minister of the Government, or
(b) a person (other than a Department of State) mentioned in Part I of the First Schedule to this Act whose business and functions are comprised in such a Department of State or in relation to which functions are performed by that Department of State.

(whether or not all or any of the functions of that Minister of the Government stand delegated to a Minister of State at a Department of State),

Reports etc. by the Ombudsman.

6.—(1) In any case where a complaint is made to the Ombudsman in relation to an action and the Ombudsman decides not to carry out an investigation under this Act into the action or to discontinue such an investigation, he shall send to the person who made the complaint a statement in writing of his reasons for the decision and, if the decision follows the receipt by the Ombudsman of a request under section 5 (3) of this Act, a copy of the request and of the statement in writing of the reasons for the request attached to the request and he shall send to such other (if any) person as he considers appropriate such statement in writing in relation to the matter as he considers appropriate.
In any case where the Ombudsman conducts an investigation under this Act, he shall send a statement in writing of the results of the investigation to—

(a) the Department of State or other person specified in Part I of the First Schedule to this Act, concerned,

(b) the Department of State in which are comprised the business and functions of, or which performs functions in relation to, any person (other than a Department of State) specified in the said Part I to whom a statement is sent under paragraph (a) of this subsection,

(c) any other person who has or, in a case where a complaint in relation to the action the subject of the investigation has been made to the Ombudsman, is alleged in the complaint to have taken or authorised the action, and

(d) any other person to whom he considers it appropriate to send the statement.

Where, following an investigation under this Act into an action, it appears to the Ombudsman that the action adversely affected a person to whom paragraph (a) of section 4 (2) of this Act applies and fell within paragraph (b) of the said section 4 (2), he may recommend to the Department of State, or other person specified in Part I of the First Schedule to this Act, concerned—

(a) that the matter in relation to which the action was taken be further considered,

(b) that measures or specified measures be taken to remedy, mitigate or alter the adverse affect of the action, or

(c) that the reasons for taking the action be given to the Ombudsman,

and, if the Ombudsman thinks fit to do so, he may request the Department of State or other person aforesaid to notify him within a specified time of its or his response to the recommendation.

Where the Ombudsman carries out an investigation under this Act into an action the subject of a complaint to him, he shall notify the person who made the complaint of the result of the investigation, the recommendation (if any) made by him under subsection (3) of this section in relation to the matter and the response (if any) made to it by the Department of State or other person to whom it was given.

Where it appears to the Ombudsman that the measures taken or proposed to be taken in response to a recommendation under subsection (3) of this section are not satisfactory, he may, if he so thinks fit, cause a special report on the case to be included in a report under subsection (7) of this section.

The Ombudsman shall not make a finding or criticism adverse to a person in a statement, recommendation or report under subsection (1), (3) or (5) of this section without having afforded to the person an opportunity to consider the finding or criticism and to make representations in relation to it to him.

The Ombudsman shall cause a report on the performance of his functions under this Act to be laid before each House of the Oireachtas annually and may from time to time cause to be laid before each such House such other reports with respect to those functions as he thinks fit. The terms of a request under section 5 (3) of this Act and of the statement in writing of the reasons for the request attached to the request shall be included in a report under this section.

For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—
the publication of any matter by the Ombudsman in making a report to either House of the Oireachtas for the purpose of this Act,

(b) the publication by the Ombudsman—

(i) to a person mentioned in subsection (1) of this section of a statement sent to that person in pursuance of that subsection,

(ii) to a person mentioned in subsection (2) of this section of a statement sent to that person in pursuance of that subsection,

(iii) to a person mentioned in subsection (3) of this section of a recommendation made to that person by the Ombudsman in pursuance of that subsection,

(iv) to a person mentioned in subsection (4) of this section of a notification given to that person pursuant to that subsection.

Powers of the Ombudsman in respect of examinations and investigations.

7.—(1) (a) The Ombudsman may, for the purposes of a preliminary examination, or an investigation, by him under this Act require any person who, in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his power or control, that is relevant to the examination or investigation to furnish that information, document or thing to the Ombudsman and, where appropriate, may require the person to attend before him for that purpose and the person shall comply with the requirements.

(b) Paragraph (a) of this subsection does not apply to information or so much of a document as relates to decisions and proceedings of the Government or of any committee of the Government and for the purposes of this paragraph a certificate given by the Secretary to the Government and certifying that any information or document or part of a document so relates shall be conclusive.

(2) Subject to the provisions of this Act, a person to whom a requirement is addressed under this section shall be entitled to the same immunities and privileges as if he were a witness before the High Court.

(3) A person shall not by act or omission obstruct or hinder the Ombudsman in the performance of his functions or do any other thing which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court.

(4) Any obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to a Department of State or civil servant imposed by the Official Secrets Act, 1963, shall not apply to an examination or investigation by the Ombudsman under this Act, and, subject to section 9 (2) of this Act, the State shall not be entitled in relation to any such examination or investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) The Ombudsman may, if he thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Ombudsman under this Act and to any other person who attends or furnishes information for the purposes of the investigation—

(a) sums in respect of travelling and subsistence expenses properly incurred by them, and

(b) allowances by way of compensation for loss of their time,

of such amount as may be determined by the Minister.
(6) A statement or admission made by a person in a preliminary examination, or investigation, under this Act by the Ombudsman shall not be admissible as evidence against that person in any criminal proceedings.

(7) Nothing in subsection (3) of this section shall be construed as applying to the taking of any such action as is mentioned in section 4 (7) of this Act.

Conduct of investigations.

8.—(1) An investigation by the Ombudsman under this Act shall be conducted otherwise than in public.

(2) Where the Ombudsman proposes to carry out an investigation under this Act into an action he shall afford—

   (a) any Department of State, or other person specified in Part I of the First Schedule to this Act, concerned, and
   (b) any other person who appears or, in a case where a complaint in relation to the action has been made to the Ombudsman, is alleged, to have taken or authorised the action,

an opportunity to comment on the action and if a complaint in relation to the action has been made to the Ombudsman, on any allegations contained in the complaint.

(3) Subject to the provisions of this Act, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in all the circumstances of the case.

(4) The Ombudsman may determine whether any person may be represented, by counsel, solicitor or otherwise, in an investigation by him under this Act.

Secrecy of information.

9.—(1) Information or a document or thing obtained by the Ombudsman or his officers in the course of, or for the purpose of, a preliminary examination, or investigation, under this Act shall not be disclosed except for the purposes of—

   (a) the examination or investigation and of any statement, report or notification to be made thereon under this Act, or
   (b) any proceedings for an offence under the Official Secrets Act, 1963, alleged to have been committed in respect of information or a document or thing obtained by the Ombudsman or any of his officers by virtue of this Act,

and the Ombudsman or his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of a preliminary examination, or an investigation, under this Act.

(2) (a) A Minister of the Government may give notice in writing to the Ombudsman, with respect to any document, information or thing specified in the notice, or any class of document, information or thing so specified, that, in the opinion of the Minister of the Government, the disclosure (other than to the Ombudsman or officers of the Ombudsman) of that document, information or thing or of documents,
or information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest.

(b) The Revenue Commissioners may give notice in writing to the Ombudsman, with respect to any document, information or thing in their power or control specified in the notice, or any class of such document, information or thing so specified, that in the opinion of the Revenue Commissioners the disclosure (other than to the Ombudsman or officers of the Ombudsman) of that document, information or thing or of documents, information or things of that class, would, for the reasons stated in the notice be prejudicial to the public interest.

(c) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Ombudsman or any officer of the Ombudsman to communicate to any person or for any purpose any document, information or thing specified in the notice or any document, information or thing of a class so specified.

Staff of the Ombudsman.

10.—(1) (a) There shall be employed in the office of the Ombudsman so many officers and servants as the Minister shall from time to time determine.

(b) The power of appointing a person to be an officer or servant of the Ombudsman shall be vested in the Minister.

(2) Officers and servants of the Ombudsman shall be civil servants in the Civil Service of the State.

(3) The Ombudsman may delegate to any of his officers any of his functions under this Act save those conferred by subsections (5) and (7) of section 6 of this Act or by this section.

(4) The Minister may delegate to the Ombudsman the powers exercisable by him under the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to officers and servants of the Ombudsman, and, if he does so, then, so long as the delegation remains in force—

(i) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Ombudsman, and

(ii) the Ombudsman shall, in lieu of the Minister, be, for the purposes of this Act, the appropriate authority in relation to officers and servants of the Ombudsman.

Expenses.

11.—Any expenses incurred in the administration of this Act shall to such extent as may be sanctioned by the Minister for Finance be paid out of moneys provided by the Oireachtas.

Short title and commencement.

12.—(1) This Act may be cited as the Ombudsman Act, 1980.

(2) This Act shall come into operation on such day as may be appointed by the Government by order.

Section 4.
FIRST SCHEDULE

Departments of State and other persons subject to investigation

PART I

Department of the Taoiseach
Central Statistics Office
State Paper Office
Department of Finance
Office of the Paymaster General
National Savings Committee
Revenue Commissioners
Commissioners of Public Works
State Laboratory
Ordinance Survey
Commissioner of Valuation and Chief Boundary Surveyor
Stationery Office
Department of the Public Service
Civil Service Commissioners
Local Appointments Commissioners
Department of Justice
Land Registry
Registry of Deeds
Public Record Office
Commissioners of Charitable Donations and Bequests
Department of the Environment
Department of Education
National Museum
The reference in Part I of this Schedule to the Revenue Commissioners does not include a reference to the Appeal Commissioners of Income Tax or their staff.

The reference in the said Part I to the Department of Justice does not include a reference to—

- An Garda Síochána
- the Courts, or the court officers mentioned in the Court Officers Acts, 1926 to 1961, or in the [Courts (Supplemental Provisions) Act, 1961](https://www.oireachtas.ie/en/bill/1961/6/)
- An Bord Uchtála

The reference in the said Part I to the Land Commission does not include a reference to—
the Judicial Commissioner and Appeals Tribunal
Lay Commissioners in the exercise of their statutory reserved functions

The reference in the said Part I to the Department of Labour does not include a reference to—

the Employment Appeals Tribunal
the Employment Equality Agency
the Labour Court
the Levy Appeals Tribunal
Rights Commissioners
the Secretariat to the Commission on Industrial Relations
the Secretariat to the Employer-Labour Conference

The reference in the said Part I to the Department of Industry, Commerce and Tourism does not include a reference to—

the National Prices Commission
An Coimisiún Dumpála
the Restrictive Practices Commission
the Examiner of Restrictive Practices
the Director of Consumer Affairs

The reference in the said Part I to the Department of Posts and Telegraphs does not include a reference to—

the Post Office Users' Council
the Broadcasting Complaints Commission

The reference in the said Part I to the Department of Defence does not include a reference to—

the Defence Forces
the Army Pensions Board

SECOND SCHEDULE

Persons not subject to investigation

Aer Lingus, Teoranta
Aerlinte Éireann Teoranta
Aer Rianta, Teoranta
The Agency for Personal Service Overseas
The Agricultural Credit Corporation, Limited
Arramara Teoranta
Coras Tráchtála
Cork District Milk Board
The Dental Board
The Director of Public Prosecutions
Dublin District Milk Board
Dublin Institute for Advanced Studies
Electricity Supply Board
The Fire Prevention Council
An Foras Forbartha Teoranta
An Foras Talúntais
Fóir Teoranta
Hospitals Trust Board
The Industrial Credit Company, Limited
Industrial Development Authority
Institiúid Teangeolaíochta Éireann
Institute for Industrial Research and Standards
Iontaobhas Iascaigh Intíre Ioncorportha
Irish Goods Council
Irish Life Assurance Company Limited
Irish National Petroleum Corporation Limited
The Irish National Stud Company, Limited
The Irish Productivity Centre
Irish Shipping Limited
Irish Steel Limited
Kilkenny Design Workshops Limited
Law Reform Commission
Local Government Computer Services Board
Local Government Staff Negotiations Board
Medical Bureau of Road Safety
The Medical Council
Min Fhéir (1959) Teoranta
National Board for Science and Technology
National Building Agency Limited
National Committee on Pilot Schemes to Combat Poverty
National Council for Educational Awards
National Economic and Social Council
National Film Studios of Ireland Limited
National Institute for Higher Education, Dublin
National Institute for Higher Education, Limerick
National Road Safety Association
Nitrigín Éireann Teoranta
Óstlanna Iompair Éireann Teoranta
Pigs and Bacon Commission
Radio Telefís Éireann
Shannon Free Airport Development Company Limited
St. Laurence's Hospital Board
Thomond College of Education, Limerick
Voluntary Health Insurance Board
An tÚdarás Um Ard-Oideachas
Údarás na Gaeltachta

Boards of Conservators established by or under the [Fisheries (Consolidation) Act, 1959](https://www.legislation.gov.ie/acts/1959/)

Bodies set up under the [Health (Corporate Bodies) Act, 1961](https://www.legislation.gov.ie/acts/1961/)
Bodies set up under the Health Acts

Local Authorities

County Committees of Agriculture

Vocational Education Committees

Old Age Pensions Committees and Sub-Committees

Harbour Authorities scheduled to the Harbours Acts, 1946-1976

ACTS REFERRED TO

Civil Service Commissioners Act, 1956 1956, No. 45
Civil Service Regulation Acts, 1956 and 1958
Court Officers Acts, 1926 to 1961
Court (Supplemental Provisions) Act, 1961 1961, No. 39
Fisheries (Consolidation) Act, 1959 1959, No. 14
Harbours Acts, 1946 to 1976
Health Acts, 1947 to 1970
Health (Corporate Bodies) Act, 1961 1961, No. 27
Interpretation Act, 1937 1937, No. 38
local Government Act, 1941 1941, No. 23
Official Secrets Act, 1963 1963, No. 1
Social Welfare Acts, 1952 to 1979