



AN BILLE OMBUDSMAN SLÁINTE, 2001
HEALTH OMBUDSMAN BILL, 2001

Mar a tionscnaíodh
As initiated

ARRANGEMENT OF SECTIONS

Section

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ACTS REFERRED TO

Civil Service Commissioners Act, 1956	1956, No. 45
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AN BILLE OMBUDSMAN SLÁINTE, 2001
HEALTH OMBUDSMAN BILL, 2001

BILL

entitled

5 AN ACT TO PROVIDE FOR THE APPOINTMENT AND
FUNCTIONS OF A HEALTH OMBUDSMAN, AND FOR
PURPOSES CONNECTED THEREWITH

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

10 “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;

“the Department” means the Department of Health and Children;

15 “functions” includes powers and duties and a reference to the per-
formance of a function includes, with respect to powers, a reference
to the exercise of a power;

20 “Health Board” means a Health Board for the purposes of the
Health Act, 1970, and the Health (Eastern Regional Health
Authority) Act, 1999;

“the Minister” means the Minister for Health and Children.

(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
25 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 del-
egated to a Minister of State at a Department of State, include refer-
ences to that Minister of State at a Department of State.

30 2.—(1) There is hereby established the Office of Health Ombuds-
man and the holder of the office shall be known as the Health
Ombudsman. Appointment and
terms of Office of
the Health
Ombudsman.

(2) The appointment of a person to be the Health 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 Health Ombudsman—

(a) may at his/her own request be relieved of office by the President, 5

(b) may be removed from office by the President but shall not be removed from office except for stated misbehaviour or incapacity and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his/her removal, 10

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

(4) Subject to the provisions of this section, a person appointed to be the Health Ombudsman shall hold office for a term of 6 years and may be re-appointed to the office for a second or subsequent term. 15

(5) (a) Where a person who holds the office of Health Ombudsman is nominated either as a candidate for election to either House of the Oireachtas, the European Parliament or a local authority or as a member of Seanad Éireann or is appointed as a member of the European Parliament or a local authority, he/she shall thereupon cease to hold the office of Health Ombudsman. 20

(b) A person who is for the time being entitled—

(i) under the Standing Orders of either House of the Oireachtas to sit therein, 25

(ii) under the rules of procedure of the European Parliament to sit therein, or

(iii) under the standing orders of a local authority to sit as a member thereof, 30

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

(6) A person who holds the office of Health Ombudsman shall not hold any other office or employment in respect of which emoluments are payable. 35

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

Salary and pension.

3.—(1) There shall be paid to the holder of the office of Health Ombudsman the same remuneration and allowances for expenses as are paid to a judge of the High Court. 40

(2) (a) The Minister, in consultation with the Minister for Finance, 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 Health Ombudsman. 45

(b) The Minister, in consultation with the Minister for Finance, 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.

5 (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
10 the validity of anything previously done thereunder.

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

(2) Subject to the provisions of this Act, the Health Ombudsman
15 may investigate any action taken by or on behalf of the Department, health Board, hospital in receipt of public funds and/or any board, agency or person in receipt of public funds in relation to health, (being an action taken in the performance of its functions) where, upon having carried out a preliminary examination of the matter, it
20 appears to the Health Ombudsman—

(a) that the action has or may have adversely affected a person, and

(b) that the action was or may have been—

(i) taken without proper authority,

25 (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 practice, or

30 (vii) otherwise contrary to fair or sound practice.

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

(a) a complaint has been made to him/her in relation to the action by a person, or

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

(4) The Health Ombudsman may—

40 (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/she 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/she has, has not been refused redress. 5

(5) It shall not be necessary for the Health Ombudsman to investigate an action under this Act if he/she is of opinion that the subject matter concerned has been, is being or will be sufficiently investigated in another investigation by the Health Ombudsman under this Act, or the Ombudsman, as appointed under the Ombudsman Act, 1980, as amended by the Ombudsman (Amendment) Act, 1984. 10

(6) An examination or investigation by the Health 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. 15

(7) In determining whether to initiate, continue or discontinue an investigation under this Act, the Health Ombudsman shall, subject to the provisions of this Act, act in accordance with his/her own discretion. 20

(8) Nothing in subsection (2)(a) or (3)(a) of this section shall be construed as prohibiting the investigation by the Health Ombudsman of— 25

- (a) an action that, in the opinion of the Health 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/her by any individual acting other than in an official capacity. 30

(9) (a) The Government may, after consultation with the Health Ombudsman, by order expand the remit of the Health Ombudsman and such expanded remit shall have effect in accordance with the terms of any orders under this paragraph. 35

(b) 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. 40

Exclusions.

5.—The Health 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 justicable by that 45

court whether the proceedings have been otherwise concluded or have not been concluded,

- 5 (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),

(b) in—

- 10 (i) a case where a complaint is made to the Health 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,

- 15 (ii) any other case, if the investigation is not commenced before the expiration of 12 months from the time of the action,

or

20 (c) if the action is taken before the commencement of this Act,

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

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

30 **6.—(1)** In any case where a complaint is made to the Health Ombudsman in relation to an action and the Health Ombudsman decides not to carry out an investigation under this Act into the action or to discontinue such an investigation, he/she shall send to the person who made the complaint a statement in writing of his/her reasons for the decision and, if the decision follows the receipt by the Health Ombudsman of a request under 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/she shall send to such other (if any) person as he/she considers appropriate such statement in writing in relation to the matter as he/she considers appropriate.

Reports, etc., by Health Ombudsman.

40 (2) In any case where the Health Ombudsman conducts an investigation under this Act, he/she shall send a statement in writing of the results of the investigation to—

(a) the Department of Health and Children, or health board, hospital, agency or person concerned,

45 (b) 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 Health Ombudsman, is alleged in the complaint to have taken or authorised the action, and

50 (c) any other person to whom he/she considers it appropriate to send the statement.

(3) Where, following an investigation under this Act into an action, it appears to the Health 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/she may recommend to the Department of Health and Children, or health board, hospital, agency or person concerned— 5

(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 10

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

and, if the Health Ombudsman thinks fit to do so, he/she may request any of the aforesaid to notify him/her within a specified time of its or his/her response to the recommendation. 15

(4) Where the Health Ombudsman carries out an investigation under this Act into an action the subject of a complaint to him/her, he/she shall notify the person who made the complaint of the result of the investigation, the recommendation (if any) made by him/her under *subsection (3)* of this section in relation to the matter and the response (if any) made to it by the Department of Health and Children, health board, hospital, agency or person to whom it was given. 20

(5) Where it appears to the Health 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/she may, if he/she so thinks fit, cause a special report on the case to be included in a report under *subsection (7)* of this section. 25

(6) The Health 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/her. 30

(7) The Health Ombudsman shall cause a report on the performance of his/her 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/she thinks fit. The terms of a request under 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. 35 40

(8) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

(a) the publication of any matter by the Health Ombudsman in making a report to either House of the Oireachtas for the purpose of this Act, 45

(b) the publication by the Health Ombudsman—

(i) to a person mentioned in *subsection (1)* of this section of a statement sent to that person in pursuance of that subsection, 50

- (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 Health 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.

10 7.—(1) (a) The Health Ombudsman may, for the purposes of a preliminary examination, or an investigation, by him/her under this Act require any person who, in the opinion of the Health Ombudsman, is in possession of information, or has a document or thing in his/her power or control, that is relevant to the examination or investigation to furnish that information, document or thing to the Health Ombudsman and, where appropriate, may require the person to attend before him/her for that purpose and the person shall comply with the requirements.

Powers of Health Ombudsman in respect of examinations and investigations.

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25 (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.

30 (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/she were a witness before the High Court.

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

40 (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 Health 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.

50 (5) The Health Ombudsman may, if he/she thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Health 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, in consultation with the Minister for Finance.

(6) A statement or admission made by a person in a preliminary examination, or investigation, under this Act by the Health Ombudsman shall not be admissible as evidence against that person in any criminal proceedings. 5

(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. 10

Conduct of investigations.

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

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

(a) any Department of State, Health Board, Hospital, Agency or person concerned, and 15

(b) any other person who appears or, in a case where a complaint in relation to the action has been made to the Health Ombudsman, is alleged to have taken or authorised the action, 20

an opportunity to comment on the action and if a complaint in relation to the action has been made to the Health 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 Health Ombudsman considers appropriate in all the circumstances of the case. 25

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

Secrecy of information.

9.—(1) Information or a document or thing obtained by the Health Ombudsman or his/her 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— 30

(a) the examination or investigation and of any statement, report or notification to be made thereon under this Act, or 35

(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 Health Ombudsman or any of his/her officers by virtue of this Act, 40

and the Health Ombudsman or his/her officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his/her or their knowledge in the course of a preliminary examination or an investigation under this Act. 45

5 (2) (a) A Minister of the Government may give notice in writing to the Health 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 Health Ombudsman or officers of the Health 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.

15 (b) The Revenue Commissioners may give notice in writing to the Health 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 Health Ombudsman or officers of the Health 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.

20 (c) Where a notice is given under this subsection, nothing in this Act shall be construed as authorising or requiring the Health Ombudsman or any officer of the Health 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.

25 **10.—**(1) (a) There shall be employed in the Office of the Health Ombudsman so many officers and servants as the Minister shall, in consultation with the Minister for Finance, from time to time determine. Staff of Health Ombudsman.

30 (b) The power of appointing a person to be an officer or servant of the Health Ombudsman shall be vested in the Minister, in consultation with the Minister for Finance.

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

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

40 (4) The Minister for Finance may delegate to the Health Ombudsman the powers exercisable by him/her 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 Health Ombudsman, and, if he/she does so, then, so long as the delegation remains in force—

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

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

Short title and commencement.

11.—(1) This Act may be cited as the Health Ombudsman Act, 2001.

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