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Explanatory Memorandum](#)



**AN BILLE UM OMBUDSMAN NEAMHSPLEÁCH AN
GHARDA, 2001
INDEPENDENT GARDA OMBUDSMAN BILL, 2001**

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

Section

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3. Functions of Ombudsman.
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[No. 53 of 2001]

Section

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ACTS REFERRED TO

Civil Service Commissioners Act, 1956	1956, No. 45
Civil Service Regulation Acts, 1956 to 1996	
European Parliament Elections Act, 1997	1997, No. 2
Garda Síochána (Complaints) Act, 1986	1986, No. 29



**AN BILLE UM OMBUDSMAN NEAMHSPLEÁCH AN
GHARDA, 2001
INDEPENDENT GARDA OMBUDSMAN BILL, 2001**

BILL

5

entitled

AN ACT TO ESTABLISH AN OFFICE TO BE KNOWN AS
OMBUDSMAN NEAMHSPLEÁCH AN GHARDA OR IN
THE ENGLISH LANGUAGE, THE INDEPENDENT
10 GARDA OMBUDSMAN, TO REPEAL THE GARDA
SÍOCHÁNA (COMPLAINTS) ACT, 1986, AND TO PRO-
VIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act —

Interpretation.

“Act of 1986” means the Garda Síochána (Complaints) Act, 1986;

15 “civil servant in the Civil Service of the State” means a person hold-
ing a position in the Civil Service of the State;

“employed” means employed under a contract of service or appren-
ticeship;

20 “establishment day” means the day the Minister shall by order
appoint to be the establishment day for the purposes of this Act;

“former Boards” shall be construed in accordance with *section 9*;

“Minister” means the Minister for Justice, Equality and Law
Reform;

25 “officer of the Commission” means a person employed by the
Commission;

“Ombudsman” shall be construed in accordance with *section 2*;

30 “recognised trade unions and staff associations” means trade unions
and staff associations recognised by the Ombudsman or former
Boards for the purpose of negotiations which are concerned with the
remuneration, conditions of employment or working conditions of
officers of the Ombudsman.

(2) (a) In this Act a reference to a section is a reference to a
section of this Act, unless it is indicated that reference to
some other enactment is intended.

(b) In this Act a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended. 5

Establishment of Ombudsman.

2.—(1) There shall be an Ombudsman to be known as Ombudsman Neamhspleách an Gharda or in the English language, the Independent Garda Ombudsman (“the Ombudsman”), to perform the functions conferred on him or her by this Act.

(2) The Ombudsman shall be a corporation sole with perpetual succession and an official seal and power to sue and be sued in his or her corporate name and to acquire, hold and dispose of land or an interest in land or rights over or in respect of land and to acquire, hold and dispose of any other property. 10

(3) The Ombudsman shall, subject to the provisions of this Act, be independent in the exercise of his or her functions. 15

(4) The Minister shall appoint the Ombudsman on the recommendation of the Civil Service Commissioners.

(5) The Ombudsman shall, unless he or she sooner dies, resigns, becomes disqualified or is removed from office, hold office for 7 years and he or she shall be eligible for re-appointment. 20

(6) In appointing the Ombudsman, the Minister shall have regard to the requirement of independence and the desirability of his or her having knowledge or experience of human rights and in particular international standards in the criminal justice field. 25

(7) The Ombudsman shall be paid such remuneration (if any), superannuation benefits and allowances for expenses as the Minister with the consent of the Minister for Finance, may, from time to time determine.

(8) The Ombudsman may at any time resign his or her office by letter addressed to the Minister and the resignation shall take effect as and from the date on which the Minister receives the letter. 30

(9) The Minister may at any time apply to the High Court for an order entitling him or her to remove the Ombudsman from office if, in the opinion of the court, the Ombudsman has become incapable through ill-health of effectively performing his or her functions or has committed stated misbehaviour or whose removal appears to the court to be necessary for the effective performance by the Ombudsman of his or her functions. 35

(10) The Ombudsman shall, as soon as may be after the establishment of his or her office, provide himself or herself with a seal. 40

(11) The seal of the Ombudsman shall be authenticated by the signature of the Ombudsman, or a member of the staff of the Ombudsman authorised by him or her to act in that behalf.

(12) Judicial notice shall be taken of the seal of the Ombudsman and every document purporting to be an instrument made by the Ombudsman and to be sealed with the seal (purporting to be authenticated in accordance with *subsection (11)*) of the Ombudsman shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown. 45 50

3.—(1) The Ombudsman shall perform the following functions: Functions of
Ombudsman.

- 5 (a) to investigate and report on his or her findings in relation to any complaint relating to the Garda Síochána that may be made to him or her in accordance with this Act;
- (b) to investigate and report on his or her findings in relation to any matter (including a matter which is capable of being the subject of a complaint) relating to the Garda Síochána which appears to the Ombudsman to warrant investigation;
- 10 (c) to compile and monitor data on patterns and trends in complaints against the Garda Síochána or individual members thereof;
- (d) to do all such things as are ancillary to or consequential on the foregoing.

15 (2) The Ombudsman shall, to such extent and in such manner as he or she considers appropriate, disseminate, for the benefit of those for whom his or her services are made available, information in relation to those services and their availability.

20 (3) The Ombudsman may perform any of his or her functions through any member of his or her staff duly authorised by the Ombudsman in that behalf.

(4) The Minister may, with the consent of the Minister for Finance, by order, assign to the Ombudsman such additional functions as the Minister considers to be incidental to or consequential on the
25 functions assigned to him or her by this Act.

(5) Subject to the provisions of this Act, the Ombudsman may do anything which he or she considers necessary or expedient for enabling him or her to perform his or her functions under this Act.

30 4.—(1) Any person may complain to the Ombudsman in connection with any act or omission alleged to constitute misbehaviour on the part of any member of the Garda Síochána, whether or not the act or omission is alleged to constitute an offence or a breach of discipline, provided that the act or omission occurred not more than 2 years before the date of the complaint or there are exceptional
35 circumstances warranting investigation. Procedure for
complaint.

(2) Any complaint made by any person to a member of the Garda Síochána shall be recorded forthwith by the member concerned and forwarded to the Ombudsman and shall be deemed to be a complaint made by the person concerned to the Ombudsman.

40 (3) The Ombudsman shall investigate every complaint made to him or her under this Act, unless having conducted a preliminary examination of the complaint he or she is of opinion that it is fit for informal resolution, or resolution by mediation, and the complainant consents to that course of action, or unless the complaint is manifestly frivolous and vexatious.
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(4) No member of the Garda Síochána shall be involved in the investigation to be carried out pursuant to this Act.

(5) The Ombudsman shall afford the complainant and the member concerned an opportunity to be heard and to adduce evidence at a hearing to be held by the Ombudsman.

(6) Any oral evidence adduced by either the complainant or the member concerned at any hearing held pursuant to this section shall be liable to cross-examination by the other party. 5

(7) For the purposes of a hearing the Ombudsman shall have power by order to summon witnesses, to require the production of evidence or the discovery of documents, to administer oaths or affirmations and to require a witness to answer any question or disclose any information. 10

(8) Any person who contravenes an order under *subsection (7)* without lawful excuse shall be guilty of an offence.

(9) The Ombudsman may apply to the Circuit Court for the Circuit in which the person concerned resides for an order requiring any person to comply with an order under *subsection (7)*. 15

(10) At or after the conclusion of an investigation the Ombudsman shall report on the complaint and shall make recommendations thereon.

(11) The report shall include the following matters: 20

(a) a declaration as to whether the complaint is upheld (in whole or part) or rejected,

(b) if a complaint is upheld in whole or part,

(i) a declaration as to whether a disciplinary sanction ought to be imposed and if so particulars of the sanction, 25

(ii) if the Ombudsman is of opinion that criminal behaviour is or may be disclosed, whether in the opinion of the Ombudsman the behaviour warrants reference to the Director of Public Prosecutions, and if so a declaration that the matter has been referred to the Director. 30

(12) The Commissioner of the Garda Síochána shall be required to impose any sanction so recommended, unless an appeal is lodged within 21 days of the decision in accordance with this Act. 35

(13) This section shall apply with any necessary modifications to an investigation undertaken by the Ombudsman of his or her own motion.

Appeals. 5.—(1) A member or a complainant who is dissatisfied with the decision of the Ombudsman may appeal therefrom to the High Court. 40

(2) The High Court shall conduct the appeal and shall decide thereon in like manner to the investigation under *section 4*.

(4) No award of costs may be made against the complainant in a decision on an appeal under this section (or on any further appeal). 45

6.—Not later than 31 March in each year, the Ombudsman shall make a report to the Houses of the Oireachtas, in such form as he or she may approve, of his or her activities during the preceding year.

Reports of
Ombudsman.

7.—(1) The Ombudsman may appoint such number of persons to the staff of the Ombudsman as may be approved of by the Ombudsman with the consent of the Minister for Finance.

Staff of
Ombudsman.

(2) The grades of the staff of the Ombudsman and the numbers of staff in each grade shall, with the consent of the Minister for Finance, be determined by the Ombudsman.

(3) An officer of the Ombudsman shall, upon his or her appointment as such, be a civil servant in the Civil Service of the State.

(4) The appropriate authority (within the meaning of the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 to 1996) in relation to officers of the Ombudsman shall, for the purposes of those Acts, be the Ombudsman.

(5) The Ombudsman may engage under contracts for services such, and such number of, persons to provide such services to the Ombudsman under such terms and conditions as may, with the consent of the Minister for Finance, be determined by the Ombudsman.

(6) A person appointed under *subsection (1)* or a person engaged under *subsection (5)* shall be paid such remuneration or fees and allowances for expenses (if any) incurred by the person as may, with the consent of the Minister for Finance, be determined by the Ombudsman.

8.—(1) Where the Ombudsman is—

Membership of
either House of
Oireachtas or of
European
Parliament.

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or to the European Parliament, or

(c) regarded pursuant to the European Parliament Elections Act, 1997, as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon cease to be the Ombudsman.

(2) Where a member of the staff of the Ombudsman is—

(a) nominated as a member of Seanad Éireann, or

(b) elected as a member of either House of the Oireachtas or to the European Parliament, or

(c) regarded, pursuant to the said Act, as having been elected to the European Parliament to fill a vacancy,

he or she shall thereupon stand seconded from his or her employment with the Ombudsman and shall not be paid by, or be entitled to receive from, the Ombudsman remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be) and ending when he or she ceases to be a member of either such House or such Parliament.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member, or a member of the staff of, the Ombudsman. 5

(4) Without prejudice to the generality of *subsection (2)*, that subsection shall be construed as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Ombudsman for the purposes of any superannuation benefits.

Dissolution of former Boards.

9.—(1) On the establishment day the former Garda Síochána Complaints Board and Garda Síochána Complaints Appeals Board (“former Boards”) shall become and be dissolved. 10

(2) References in any Act of the Oireachtas passed before the establishment day or in any instrument made before the establishment day under an Act of the Oireachtas to the former Boards shall, on and after that day, be construed as references to the Ombudsman. 15

Transfer of assets and liabilities of former Boards.

10.—(1) The following shall be and hereby are transferred to the Ombudsman on the establishment day:

(a) all property and rights relating to such property held or enjoyed immediately before that day by the former Boards or any trustee or agent thereof acting on his or her behalf, and 20

(b) all liabilities incurred before that day by the former Boards or any trustee or agent thereof acting on his or her behalf that had not been discharged before that day, 25

and, accordingly, without any further conveyance, transfer or assignment—

(i) the said property, real and personal, shall on that day, vest in the Ombudsman for all the estate, term or interest for which, immediately before that day, he or she was so vested in the former Boards, as the case may be, but subject to all trusts and equities affecting the property and capable of being performed, 30

(ii) the said rights shall, as on and from that day, be enjoyed by the Ombudsman, and 35

(iii) the said liabilities shall, as on and from that day, be liabilities of the Ombudsman.

(2) All property and rights relating thereto transferred to the Ombudsman by this section that, on the establishment day, were so standing in the name of the former Boards or any said trustee or agent thereof shall, upon the request of the Ombudsman, be transferred into his or her name. 40

(3) Every right and liability transferred to the Ombudsman by this section may, on or after the establishment day, be sued on, recovered or enforced by or against the Ombudsman in his or her own name and it shall not be necessary for the Ombudsman to give notice to the person whose right or liability is transferred by this section of the transfer. 45

11.—(1) Every contract or agreement made between the former Boards, or any trustee or agent thereof acting on his or her behalf, and any other person and in force but not fully executed and completed immediately before the establishment day shall continue in force on or after that day and shall be construed and have effect as if the name of the Ombudsman was substituted therein for that of the former Boards or, as appropriate, his or her said trustee or agent.

Preservation of certain continuing contracts and adaptation of references to former Boards.

(2) References to the former Boards, or any trustee or agent thereof acting on his or her behalf, contained immediately before the establishment day in the memorandum and articles of association of any company shall, on and after that day, be construed as references to the Ombudsman.

12.—Nothing in this Act shall affect the validity of any act that was done before the establishment day by or on behalf of the former Boards, and every such act shall, if and in so far as he or she was operative immediately before that day, have effect on and after that day as if he or she had been done by or on behalf of the Ombudsman.

Saving for certain acts.

13.—Where immediately before the establishment day, any legal proceedings are pending in any court or tribunal and the former Boards, or any trustee or agent thereof acting on his or her behalf, is a party to the proceedings, the name of the Ombudsman shall be substituted therein for that of the former Boards or, as appropriate, the said trustee or agent thereof and the proceedings shall not abate by reason of such substitution.

Pending legal proceedings.

14.—The Minister for Finance may in each financial year advance to the Ombudsman out of moneys provided by the Oireachtas, such sum or sums as the Minister for Finance may determine for the purposes of expenditure by the Ombudsman in the performance of his or her functions under this Act.

Advances by Minister for Finance to Ombudsman.

15.—(1) The Ombudsman shall keep in such form as may be approved by the Minister for Finance, all proper and usual accounts of the resources of the Ombudsman, which accounts shall include an income and expenditure account and balance sheet and, in particular, shall keep such special accounts as the Minister may from time to time direct.

Accounts and audits of Ombudsman.

(2) Accounts kept in pursuance of this section shall be submitted, as soon as may be after the end of each financial year to which they relate by the Ombudsman to the Comptroller and Auditor General for audit and a copy of the income and expenditure account and of the balance sheet and of such other (if any) of his or her accounts as the Minister may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister as soon as may be and the Minister shall cause copies of each of the documents aforesaid to be laid before each House of the Oireachtas.

16.—(1) Every person who immediately before the establishment day is employed by the former Boards shall, on that day, be transferred to, and become a member of the staff of, the Ombudsman.

Transfer of staff to Ombudsman.

(2) Every person, being a civil servant of the Government, who immediately before the establishment day is on secondment to the former Ombudsman and who has been designated by the Minister,

at any time before such day as may be appointed by the Minister by order, shall on the day of such designation be transferred to and become a member of the staff of the Ombudsman.

(3) The Minister shall not make an order under *subsection (2)* without having—

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(a) notified in writing any recognised trade unions or staff associations concerned and the Ombudsman of his or her intention so to do, and

(b) considered, within such time as may be specified in the notice, any representations made by such trade unions, staff associations or the Ombudsman, in relation to the matter.

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Terms and conditions of staff transferred to the Ombudsman.

17.—(1) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person who is transferred by *section 16(1)* to the staff of the Ombudsman shall not, while in the service of the Ombudsman, receive a lesser scale of pay or be made subject to less beneficial terms and conditions of service than the scale of pay to which that person was entitled and the terms and conditions of service to which he or she was subject immediately before the day on which he or she was so transferred.

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(2) Until such time as the scale of pay and the terms and conditions of service of a person transferred by *section 16(2)* to the staff of the Ombudsman are varied by the Ombudsman, following consultation with any recognised trade unions and staff associations concerned, the scale of pay to which he or she was entitled and the terms and conditions of service, restrictions, requirements and obligations to which he or she was subject immediately before his or her transfer shall continue to apply to him or her and may be applied or imposed by the Ombudsman while he or she is a member of the staff of the Ombudsman, and no such variation shall operate to worsen the scale of pay or the terms or conditions of service aforesaid applicable to such person immediately before the day on which he or she was so transferred to the staff of the Ombudsman, save in accordance with a collective agreement negotiated with any recognised trade unions or staff associations concerned.

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Superannuation.

18.—(1) The Ombudsman may, with the consent of the Minister for Finance, make a scheme or schemes for the granting of superannuation benefits to or in respect of members of the staff of the Ombudsman.

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(2) A scheme under *subsection (1)* shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.

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(3) The Ombudsman may, with the consent of the Minister for Finance, make a scheme amending or revoking a scheme under this section including a scheme under this subsection.

(4) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable in pursuance of a

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scheme or schemes under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

5 (5) No superannuation or other benefit shall be granted by the Ombudsman on the resignation, retirement or death of a member of the staff of the Ombudsman otherwise than in accordance with a scheme or schemes under this section.

10 (6) 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 a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

15 (7) (a) A scheme or schemes under *subsection (1)* shall, as respects a person transferred by *section 16* to a position on the staff of the Ombudsman, provide for the granting to or in respect of him or her of superannuation benefits upon and subject to terms and conditions that are not less favourable to him or to her than the terms and conditions applied to him or her immediately before the day on which he or she was so transferred in relation to the grant of such benefits.

25 (b) Where, during the period between the passing of this Act and the coming into operation of a scheme under this section, superannuation benefits would have been granted to or in respect of that person in respect of such employment had he or she continued to be employed during that period by the former Boards, the superannuation benefits shall be granted and paid to or in respect of the person by the Ombudsman in accordance with the scheme of such enactments in relation to superannuation as applied to the person immediately before his or her transfer and, for that purpose, his or her pensionable service with the Ombudsman shall be aggregated with his or her previous pensionable service.

35 (8) In this section “superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

40 **19.**—The Minister may make such regulations as are necessary for the purpose of giving effect to this Act. Making of regulations.

45 **20.**—Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next subsequent 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. Laying of regulations.

50 **21.**—The 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. Expenses.



**AN BILLE UM OMBUDSMAN NEAMHSPLEÁCH AN
GHARDA, 2001
INDEPENDENT GARDA OMBUDSMAN BILL, 2001**

EXPLANATORY MEMORANDUM

Purpose of the Bill

The Bill is designed to redress the fundamental defects of the existing Garda complaints procedures. Those defects are in-built design flaws in the Garda Síochána (Complaints) Act, 1986 (the Act of 1986). They include a failure to allow independent investigation, excessive power remaining with the Garda Commissioner and insufficient procedural rights for the complainant. In order to promote confidence in the complaints mechanism the Bill proposes to repeal the Act of 1986, dissolve the existing Complaints Board and Appeal Board, and set up a new body to be called the Independent Garda Ombudsman.

The Bill draws on the Report of the Independent Commission on Policing (the Patten Report) and Part VI of the Police (Northern Ireland) Act, 1998, as amended by Part VIII of the Police (Northern Ireland) Act, 2000.

Provisions of Bill

Section 1 provides definitions.

Section 2 establishes the new post of Ombudsman.

Section 3 sets out his or her functions including investigating the Garda Síochána independently of any complaints received.

Section 4 sets out the procedure for complaints which will give enhanced rights to the complainant and will end the system of the Garda Síochána being investigated by members of the Garda Síochána itself.

Section 5 replaces the previous procedure for appeal to an Appeal Board where the complainant was not a party with all of the usual rights of a party. It will now allow either the complainant or the member to appeal to the High Court.

Sections 6 to 8 are standard provisions relating to reports, staff and membership of parliamentary bodies.

Section 9 dissolves the existing Complaints Board and Appeal Board.

Sections 10 to 13 are consequential.

Sections 14 to 21 are standard provisions.

Section 22 repeals the Act of 1986.

Section 23 provides penalties for offences under the Bill.

Section 24 provides the short title.

*An Teachta Breandán Ó Húilín,
Deireadh Fómhair, 2001.*