



AN BILLE OMBUDSMAN (ÓGLAIGH NA hÉIREANN) 2002
OMBUDSMAN (DEFENCE FORCES) BILL 2002

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to establish the office of Ombudsman for the Defence Forces and to provide for the appointment, functions and staff of the Ombudsman and to amend the Defence Act 1954.

Section 1 provides the interpretation of terms used in the Bill and is self explanatory.

Section 2 provides for the establishment of the office of Ombudsman for the Defence Forces and for the appointment by the President, on the recommendation of the Government, of the Ombudsman. This section also provides that the Ombudsman shall hold office on such terms and conditions as the Minister, with the consent of the Minister for Finance, may determine and specifies those who will not be eligible to fill the appointment. This section also prescribes how the office may be vacated and provides that the retirement age will be as prescribed by regulations.

Section 3 provides for remuneration, allowances for expenses and for the making of a scheme or schemes for the granting of superannuation benefits to or in respect of the Ombudsman for the Defence Forces.

Section 4 provides for the functions of the Ombudsman and sets out the nature of the complaints that may be investigated by him or her when it appears that the complaint is not likely to be resolved by the military authorities by way of the redress procedures prescribed in the Defence Act 1954. This section also provides the circumstances in which the Ombudsman may not carry out an investigation or, may discontinue an investigation. Having regard to the fact that the Department of Defence is already within the remit of the Ombudsman appointed under the Ombudsman Act 1980, while the Defence Forces are not, this section also provides that a complaint made to either the Ombudsman appointed under the Ombudsman Act 1980, or the Ombudsman appointed under this Act, about an administrative action taken by a civil servant of the Department of Defence, may not, subsequently, be made to the other Ombudsman about the same matter.

Section 5 provides for the type of complaint that shall not be investigated by the Ombudsman, such as—

- (a) where the complainant has initiated legal proceedings or has a statutory right of appeal, reference or review to or before a court,

- (b) the action complained of has been or is the subject of investigation under military law or relates to a military operation,
- (c) the complaint relates to terms and conditions of service and all other matters that come within the scope of representation and are appropriate for discussion and negotiation at conciliation and arbitration.

This section also provides that the Ombudsman shall not investigate a complaint where, for security reasons, the Minister requests him or her in writing not to investigate such complaint. The Ombudsman may apply to the High Court for a declaration that the matter is not of such gravity as to warrant such a request.

Section 6 provides for the making of complaints to the Ombudsman by serving and former members of the Defence Forces within 12 months of—

- (a) the date of the action complained of, or
- (b) the date the complainant became aware of the action, whichever is the later.

This section also prescribes the persons about whose actions a complaint may be made.

Section 7 provides that, on completion of his or her investigation into a complaint, the persons, including the complainant, to whom the Ombudsman will issue reports and/or recommendations, as well as the person(s) to be notified in any case where the Ombudsman decides not to carry out an investigation. This section also provides that the Ombudsman will produce an annual report on the performance of his/her functions and that such report shall be laid before each House of the Oireachtas.

Section 8 provides that, for the purposes of a preliminary examination or investigation into a complaint, the Ombudsman may require any person, who in his/her opinion, possesses any information or document that is relevant to the investigation to furnish such information, etc., to him/her, with the exception of information or documents relating to Government proceedings and decisions and information or documents relating to security or defence of the State or military operations. This section also provides for the payment by the Ombudsman to persons attending before him/her of travelling and subsistence expenses as he/she thinks fit.

Section 9 provides that an investigation by the Ombudsman into a complaint will not be held in public and that all persons concerned with the complaint will be afforded an opportunity to comment on the action complained of and on any allegation made in the complaint. This section also provides that the Ombudsman will, subject to any regulations made by the Minister in the matter, conduct an investigation in such manner as he/she considers appropriate and that both the Ombudsman and investigation officers appointed by him/her, will have a right of access to military installations for the purpose of conducting preliminary examinations or investigations into complaints.

Section 10 provides that any information, documents, etc., obtained by the Ombudsman in the course of preliminary examinations or investigations will not be disclosed by him/her except for

the purposes specified and that neither the Ombudsman nor his/her staff can be called upon to give evidence in any proceedings, other than proceedings under the Official Secrets Act 1963, in relation to matters that came to his/her attention in the course of carrying out his/her functions. This section also provides that the Minister may notify the Ombudsman in writing that the disclosure, other than to the Ombudsman, of specific information, which would be an exempt record for the purposes of the Freedom of Information Act 1997 would be prejudicial to the public interest or to security and that the Ombudsman shall not disclose such information.

Sections 11 and 12 are standard provisions relating to accountability to the Public Accounts Committee and to other Oireachtas committees and are in line with similar provisions in legislation governing other independent offices.

Section 13 provides for necessary amendments to the redress of wrongs provisions prescribed in the Defence Act 1954 whereby any complaints not redressed within the military chain of command to the satisfaction of the complainant may be referred to the Minister for resolution. On the coming into effect of this Act the Minister will no longer have any involvement in complaints resolution, i.e., any complaints not resolved by the military authorities to the satisfaction of the complainant will be referred to the Ombudsman.

Sections 14, 15 and 16 are standard provisions relating to office staff, investigation officers, the keeping of proper accounts and their submission to the Comptroller and Auditor General for auditing. These provisions are in line with similar provisions in legislation governing other independent offices.

Sections 17 and 18 are standard provisions in similar legislation and provide that every regulation made by the Minister for Defence under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and that any expenses incurred by the Minister in the administration of this Act shall be paid out of monies provided by the Oireachtas.

Section 19 provides for the short title and the commencement date(s) of the Act and is self explanatory.

*An Roinn Cosanta,
Eanáir, 2002.*