



Number 36 of 2004

OMBUDSMAN (DEFENCE FORCES) ACT 2004

REVISED

Updated to 16 May 2017

This Revised Act is an administrative consolidation of the *Ombudsman (Defence Forces) Act 2004*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Misuse of Drugs (Supervised Injecting Facilities) Act 2017* (7/2017), enacted 16 May 2017, and all statutory instruments up to and including *Patent (Amendment) Rules 2017* (S.I. No. 206 of 2017), made 19 May 2017, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

This Act is not collectively cited with any other legislation. However, it deals with the same subject matter as the legislation below.

Defence Acts 1954 to 2015: this is a group of Acts included in this collective citation, to be construed together as one (*Defence (Amendment) Act 2015*, s. 4(2)). The Acts in the collectively cited group are:

- *Defence Act 1954* (18/1954)
- *Defence (Amendment) (No. 2) Act 1960* (44/1960)
- *Defence (Amendment) Act 1979* (1/1979)
- *Defence (Amendment) (No. 2) Act 1979* (28/1979)
- *Defence (Amendment) Act 1987* (8/1987)
- *Defence (Amendment) Act 1990* (6/1990)
- *Criminal Law Act 1997* (14/1997), s. 14 and sch. 2
- *Defence (Amendment) Act 1998* (31/1998)
- *Defence (Amendment) Act 2006* (20/2006)
- *Defence (Amendment) Act 2007* (24/2007)
- *Defence (Amendment) Act 2011* (17/2011)
- *Defence (Amendment) Act 2015* (24/2015)

Acts previously included in the group but now repealed are:

- *Defence (Amendment) Act 1960* (22/1960)
- *Defence (Amendment) Act 1993* (18/1993)

The following legislation also deals with related subject matter:

- *Courts Martial Appeals Act 1983* (19/1983)
- *Civil Defence Act 2002* (16/2002)
- *Defence (Miscellaneous Provisions) Act 2009* (35/2009)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1996, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Protected Disclosures Act 2014* (14/2014)
- *Defence (Amendment) Act 2007* (24/2007)

All Acts up to and including *Misuse of Drugs (Supervised Injecting Facilities) Act 2017* (7/2017), enacted 16 May 2017, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009* (S.I. No. 70 of 2009)
- *Defence Forces Ombudsman (Procedures for Access to Military Installations) Regulations 2005* (S.I. No. 781 of 2005)
- *Ombudsman (Defence Forces) Act 2004 (Commencement) Order 2005* (S.I. No. 568 of 2005)
- *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002* (S.I. No. 279 of 2002)

All statutory instruments up to and including *Patent (Amendment) Rules 2017* (S.I. No. 206 of 2017), made 19 May 2017, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Appointment of Ombudsman.
3. Remuneration and superannuation.
4. Functions of Ombudsman.
5. Exclusions.
6. Complaint to Ombudsman.
7. Reports.
8. Production of documents, information, etc.
9. Conduct of investigations.
10. Secrecy of information.
11. Committee of Public Accounts.
12. Oireachtas committees.
13. Amendment of section 114 of Act of 1954.
14. Staff.
15. Investigation officers.
16. Accounts and audits.
17. Regulations.
18. Expenses.
19. Short title and commencement.

ACTS REFERRED TO

Civil Service Commissioners Act 1956	1956, No. 45
Civil Service Regulation Act 1956	1956, No. 46
Civil Service Regulations Acts 1956 to 1996	
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Defence Act 1954	1954, No. 18

[No. 36.]

*Ombudsman (Defence Forces)
Act 2004*

[2004.]

Defence (Amendment) Act 1990	1990, No. 6
Defence (Amendment) (No. 2) Act 1960	1960, No. 44
European Parliament Elections Act 1997	1997, No. 2
Official Secrets Act 1963	1963, No. 1
Ombudsman Act 1980	1980, No. 26
Public Service Superannuation (Miscellaneous Provisions) Act 2004	2004, No. 7



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AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF AN OMBUDSMAN FOR THE DEFENCE FORCES, TO AMEND THE DEFENCE ACT 1954 AND TO PROVIDE FOR RELATED MATTERS. [10th November, 2004]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Editorial Notes:

- E1** Ombudsman for Defence Forces excluded from definition of public bodies in *Freedom of Information Act 2014* in so far as it relates to certain records (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 6 and sch. 1 part 1 para. (ad), commenced as per s. 1(2).

Interpretation.

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

“Act of 1954” means the Defence Act 1954;

“Act of 1980” means the Ombudsman Act 1980;

“action” means—

(a) any act that is carried out or any decision made by or on behalf of a person referred to in *paragraph (a), (b) or (c) of section 6(1) or paragraph (a), (b) or (c) of section 6(2)*, or

(b) a failure by or on behalf of a person referred to in *paragraph (a), (b) or (c) of section 6(1) or paragraph (a), (b) or (c) of section 6(2)* to carry out an act or make a decision,

but does not include an act or decision referred to in *paragraph (a)* or a failure to carry out an act or make a decision referred to in *paragraph (b)* that relates to or affects security or a military operation;

“civil servant” has the meaning assigned to it by the Civil Service Regulation Act 1956 but for the purposes of *sections 4(7), 6(1)(c), 6(2)(c) and 9(2)* a reference to a civil servant shall be construed as a reference to a civil servant who is or was employed as a civil servant in the Department of Defence and for the purposes of *section 6* an action taken by or on behalf of a civil servant shall concern the performance of administrative functions by that civil servant in the Department of Defence;

“complainant” means a person who makes a complaint under *section 6*;

“complaint” means a complaint made in accordance with *section 6*;

“Defence Forces” means the Permanent Defence Force referred to in section 19 of the Act of 1954 and the Reserve Defence Force referred to in section 20 of the Act of 1954;

“functions” includes powers and duties and a reference to the performance of a function shall include, with respect to powers, a reference to the exercise of a power;

“investigation officer” has the meaning assigned to it by *section 15*;

“military operation” means—

- (a) active service within the meaning of section 5 of the Act of 1954,
- (b) active service as provided for in section 4(1) of the Defence (Amendment) (No. 2) Act 1960,
- (c) operational duties at sea, or
- (d) the provision of aid to the civil power;

“Minister” means the Minister for Defence;

“Ombudsman” means the person appointed as Ombudsman for the Defence Forces under *section 2(2)*;

“security” means the security or defence of the State;

“service tribunal” has the meaning assigned to it by section 161 of the Act of 1954.

(2) In this Act—

- (a) a reference to a section is a reference to a section of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection or paragraph is a reference to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and
- (c) a reference to any enactment shall, unless the context otherwise requires, be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

Appointment of Ombudsman.

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

(2) The appointment of a person to be the Ombudsman for the Defence Forces shall be made by the President on the recommendation of the Government.

(3) Subject to this Act, a person appointed under *subsection (2)* shall hold office on such terms and conditions as the Minister may, with the consent of the Minister for Finance, determine.

(4) A person appointed to be the Ombudsman—

- (a) may at his or her 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 where there is a recommendation for removal by the Government, and
- (c) shall, where *subsection (8)* applies, vacate the office on attaining the prescribed age.

(5) Subject to this section, a person appointed to be the Ombudsman shall hold office for such term as may be specified in the instrument of appointment which term shall not exceed 7 years and such person may be eligible for re-appointment to the office for a second or subsequent term.

(6) If the person holding the office 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 Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having being elected to the European Parliament, or

(d) becomes a member of a local authority,

that person shall thereupon cease to hold the office of Ombudsman.

(7) 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 or a local authority shall, while he or she is so entitled or is such a member, be disqualified from holding the office of Ombudsman.

(8) In respect of any person who is not a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) the Minister may, with the consent of the Minister for Finance, prescribe the age at which such a person shall vacate office pursuant to *subsection (4)(c)*.

(9) A person who holds the office of Ombudsman shall not be a member of the Defence Forces or a civil servant.

Remuneration
and superannua-
tion.

3.—(1) There shall be paid to the holder of the office of Ombudsman such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

(2) The Minister may, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes for the granting of superannuation benefits to or in respect of persons who have held the office of Ombudsman as he or she thinks fit.

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

(4) The Minister may at any time, with the consent of the Minister for Finance, make and carry out a scheme or schemes amending or revoking a scheme under this section.

(5) No superannuation benefit shall be granted by the Minister nor shall any other arrangement be entered into by the Minister for the provision of such a benefit to or in respect of the person who holds the office of Ombudsman otherwise than in accordance with a scheme under this section or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.

(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.

(7) Where a dispute arises as to the claim of any person to, or to the amount of, any superannuation benefit in pursuance of a 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.

(8) In this section, "superannuation benefit" means a pension, gratuity or other allowance payable on resignation, retirement or death.

Annotations

Modifications (not altering text):

- C1** Defined benefit schemes under section not affected by *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002* (S.I. No. 279 of 2002), reg. 11 and sch. as substituted (26.02.2009) by *Occupational Pension Schemes (Preservation of Benefits) (Amendment) Regulations 2009* (S.I. No. 70 of 2009), reg. 2.

Exclusion of Schemes

11. (1) The provisions of Part III of the Act shall not apply in the case of any of the schemes specified in the Schedule to these Regulations.

...

SCHEDULE

[SCHEMES EXCLUDED FROM THE PROVISIONS OF PART III OF THE ACT

Article 11

PART I

...

Any defined benefit scheme established under section 3 of the Ombudsman (Defence Forces) Act 2004

...

PART II

Schemes for the purpose of providing benefits to the spouses and children of members of any of the schemes specified in Part I in the event of the death of a member.]

Functions of
Ombudsman.

4.—(1) The Ombudsman shall be independent in the performance of his or her functions, and shall at all times have due regard to the operational requirements of the Defence Forces.

(2) Subject to this Act, the Ombudsman may investigate any action that is the subject of a complaint made by a person affected by the action if, having carried out a preliminary examination of the matter, it appears to the Ombudsman that—

(a) the action has or may have adversely affected the complainant,

(b) 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) unreasonable, notwithstanding consideration of the context of the military environment,

- (vii) based on undesirable administrative practice, or
- (viii) otherwise contrary to fair or sound administration,

- (c) the action was not an order issued in the course of a military operation, and
- (d) in the case of a serving member of the Defence Forces, the matter is not likely to be resolved and a period of 28 days has expired since the complaint was made under section 114 of the Act of 1954.

(3) The Ombudsman may—

- (a) decide not to carry out an investigation under this Act into an action that is the subject of a complaint, or
- (b) discontinue an investigation under this Act into an action that is the subject of a complaint,

if he or she is of the opinion that—

- (i) the complaint is trivial or vexatious,
- (ii) the complainant has an insufficient interest in the matter,
- (iii) satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the complainant have been taken or are proposed to be taken, or
- (iv) the complainant has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if the complainant has taken such steps, he or she has not been refused redress.

F1[(3A) If the complaint is that a person has penalised or threatened penalisation (within the meaning of the Protected Disclosures Act 2014) against, or caused or permitted any other person to penalise or threaten penalisation against, the complainant for having made a protected disclosure (within the meaning of that Act), the Ombudsman—

- (a) is not prevented from investigating any action that is the subject of the complaint, and
- (b) may not decide not to carry out, and may not decide to discontinue, an investigation into any such action,

because no complaint has been made under section 114 of the Act of 1954.]

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

(5) A preliminary examination or an 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 preliminary examination or investigation.

(6) 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 or her own discretion.

(7) A member of the Defence Forces—

- (a) who makes a complaint to the Ombudsman concerning an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman appointed under the Act of 1980, or

(b) who makes a complaint to the Ombudsman appointed under the Act of 1980 in relation to an action taken by or on behalf of a civil servant shall not, subsequently, make a complaint about the same matter to the Ombudsman.

(8) Nothing in *subsection (2)(a)* or *section 6* shall be construed as prohibiting the investigation by the Ombudsman of—

(a) an action that is the subject of a complaint by a complainant which, in the opinion of the Ombudsman, has or may have affected the complainant other than in an official capacity, or

(b) an action that is the subject of a complaint by a complainant which was carried out, or may have been carried out, by a person acting other than in an official capacity.

(9) The Ombudsman shall furnish to the Minister such information regarding the performance of his or her functions as the Minister may from time to time request.

Annotations

Amendments:

F1 Inserted (15.07.2014) by *Protected Disclosures Act 2014 (14/2014)*, s. 20(1), S.I. No. 327 of 2014.

Exclusions.

5.—(1) The Ombudsman shall not investigate any complaint concerning an action referred to in *section 6(1)* or *6(2)*—

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

(i) the complainant has initiated legal proceedings in any civil court 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, or

(ii) the complainant has a right, conferred by or under statute, 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) if the action has been or is the subject of an investigation under **F2[Chapter IV of Part V of the Act of 1954]** of the Act of 1954 or by a service tribunal and is not an action concerning delay or any other matter concerning the administration of such investigations,

(c) if the Ombudsman is satisfied that the action relates to or affects security or a military operation,

(d) if the action concerns—

(i) any matter relating to the terms or conditions of employment in the Defence Forces, including any matter relating to the negotiation and determination of the rates of remuneration or allowances, which is within the scope of a conciliation and arbitration scheme referred to in *section 2(6)* of the Defence (Amendment) Act 1990, or

(ii) any matter concerning the organisation, structure and deployment of the Defence Forces,

(e) if the action is one—

F3[(i) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or punishment

awarded under Chapter IV of Part V of the Act of 1954, by a court-martial or by the Courts-Martial Appeal Court, or]

- (ii) that concerns the administration of military prisons or places of detention for the custody of members of the Defence Forces committed to custody by a service tribunal or otherwise,
- (f) if the complaint concerned has not been made within the period specified in *section 6(3)*, or
- (g) if the action is taken before the commencement of this Act.

(2) Where for security reasons, the Minister 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.

(3) Where the Ombudsman receives a request under *subsection (2)*, he or she may apply to the High Court for a declaration that the matter concerned is not of such gravity to warrant such request.

(4) If the High Court is satisfied that it is appropriate to do so it shall make the declaration and the Minister shall withdraw such request.

Annotations

Amendments:

- F2** Substituted (1.01.2008) by *Defence (Amendment) Act 2007 (24/2007)*, s. 11 and sch. 4, pt. 4(a), S.I. No. 254 of 2008.
- F3** Substituted (1.01.2008) by *Defence (Amendment) Act 2007 (24/2007)*, s. 11 and sch. 4, pt. 4(b), S.I. No. 254 of 2008.

Complaint to Ombudsman.

6.—(1) A serving member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that member and was taken by or on behalf of—

- (a) another serving member of the Defence Forces,
- (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
- (c) a civil servant.

(2) A former member of the Defence Forces may, subject to this Act, make a complaint to the Ombudsman concerning an action if it has affected that former member and was taken while he or she was a serving member of the Defence Forces by or on behalf of—

- (a) a serving member of the Defence Forces,
- (b) a former member of the Defence Forces while he or she was a serving member of the Defence Forces, or
- (c) a civil servant.

(3) A complainant shall make a complaint referred to in *subsections (1)* and *(2)* not later than 12 months from—

- (a) the date of the action concerned, or

(b) the date on which the complainant became aware of the action,
whichever is the later.

Annotations

Modifications (not altering text):

- C2** Application of section potentially restricted (15.07.2014) by *Protected Disclosures Act 2014* (14/2014), s. 13(1), (2)(a), (b)(iii), S.I. No. 237 of 2014.

Tort action for suffering detriment because of making protected disclosure

13. (1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused has a right of action in tort against the person by whom the detriment is caused.

(2) A person may not both—

- (a) pursue a right of action under subsection (1) against a person in respect of a matter, and
- (b) in respect of the same matter make or present against the same person— ...

(iii) a complaint under section 114 of the Defence Act 1954 or section 6 of the Ombudsman (Defence Forces) Act 2004.

...

Reports.

7.—(1) Where, following the making of a complaint, the Ombudsman decides not to carry out an investigation or to discontinue an investigation, he or she shall notify the complainant and any person concerned with the complaint, stating the reasons, in writing, for the decision.

(2) Where the Ombudsman conducts an investigation under this Act into an action that is the subject of a complaint, he or she shall send a statement in writing of the results of the investigation to—

- (a) the Minister and to all persons concerned with the complaint, and
- (b) any other person to whom he or she considers it appropriate to send the statement.

(3) Where, following an investigation under this Act into an action that is the subject of a complaint, it appears to the Ombudsman that the action adversely affected the complainant and is an action falling within *subparagraphs (i) to (viii) of section 4(2)(b)* he or she may recommend to the Minister—

- (a) that the action be further considered,
- (b) that measures or specified measures be taken to remedy, mitigate or alter the adverse effect 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 or she may request the Minister to notify him or her within a specified time of a response to the recommendation.

(4) Where the Ombudsman carries out an investigation under this Act into an action that is the subject of a complaint he or she shall notify the complainant of the result of the investigation, the recommendation (if any) made under *subsection (3)* and the response (if any) made by the Minister.

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

(6) The Ombudsman shall not make a finding or criticism adverse to a person under this section without having provided that person with an opportunity to consider, and make representations in respect of, the finding or criticism to the Ombudsman.

(7) The Ombudsman shall, as soon as may be, but not later than 4 months after the end of each year, cause a report on the performance of his or her functions under the Act to be laid before each House of the Oireachtas and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit.

(8) An annual report referred to in *subsection (7)* shall be in such form and regarding such matters as the Ombudsman thinks fit or the Minister may direct.

(9) 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 Ombudsman in making a report to either House of the Oireachtas for the purpose of this Act, and

(b) the publication by the Ombudsman—

(i) to a person mentioned in *subsection (1)* of a notification sent to that person in accordance with that subsection,

(ii) to a person mentioned in *subsection (2)* of a statement sent to that person in accordance with that subsection,

(iii) to the Minister of a recommendation made to the Minister by the Ombudsman in accordance with *subsection (3)*, and

(iv) to the complainant of a notification given to the complainant by the Ombudsman under *subsection (4)*.

Production of
document, infor-
mation, etc.

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

(b) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that 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 General to the Government certifying that any information, document, part of a document or thing so relates shall be conclusive.

(c) *Paragraph (a)* shall not apply to information, a document, part of a document or thing that concerns any matter relating to security or a military operation and for the purposes of this paragraph a certificate given by the Minister, on the advice of the Chief of Staff, certifying that any information, document, part of a document or thing was so concerned shall be conclusive.

(2) Subject to 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 or she 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 or her 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 on 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 a preliminary examination or an investigation by the Ombudsman under this Act and, subject to *section 10(3)*, the State shall not be entitled in relation to any such preliminary 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 or she thinks fit, pay to the person affected by an action in respect of which an investigation is held by the Ombudsman 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, with the consent of the Minister for Finance, be prescribed by the Minister.

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

(7) Nothing in *subsection (3)* shall be construed as applying to the taking of any such action as is mentioned in *section 4(5)* of this Act.

(8) In this section "Chief of Staff" has the meaning assigned to it by the Act of 1954.

Conduct of investigations.

9.—(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 that is the subject of a complaint he or she shall afford the Minister, a civil servant, any member of the Defence Forces, the person who is alleged to have taken or authorised the action or on whose behalf the action is alleged to have been taken or authorised, and any other person who, in the opinion of the Ombudsman, is appropriate, having regard to the complaint, an opportunity to comment on the action and on any allegation contained in the complaint.

(3) The procedure for conducting an investigation shall, subject to any regulations under *subsection (5)*, be such as is considered appropriate by the Ombudsman, having regard to all the circumstances concerned.

(4) The Ombudsman and any investigation officer shall have a right of access to any military installation for the purpose of conducting a preliminary examination or an investigation under this Act.

(5) The Minister may make regulations specifying the procedures, including notification procedures, to be applied to the exercise of the right of access referred to in *subsection (4)* for the purpose of conducting a preliminary examination or investigation under this Act.

Annotations

Editorial Notes:

- E2** Power pursuant to section exercised (1.12.2005) by *Defence Forces Ombudsman (Procedures for Access to Military Installations) Regulations 2005* (S.I. No. 781 of 2005).

Secrecy of information.

10.—(1) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any information, document, part of a document or thing obtained by the Ombudsman or an investigation officer in the course of, or for the purpose of, a preliminary examination or an investigation under this Act except for the purposes of—

- (a) the preliminary examination or the investigation concerned,
- (b) the making, in accordance with this Act, of any statement, report or notification on that preliminary examination or that investigation, or
- (c) proceedings for an offence under the Official Secrets Act 1963 that is alleged to have been committed in respect of information or a document, part of a document or thing obtained by the Ombudsman or an investigation officer by virtue of this Act.

(2) The Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not be called upon to give evidence in any proceedings, other than proceedings referred to in *subsection (1)(c)*, of matters coming to his or her knowledge in the course of a preliminary examination or an investigation under this Act.

(3) (a) The Minister may give notice in writing to the Ombudsman, with respect to any document, part of a document, information or thing specified in the notice, or any class of document, part of a document, information or thing so specified, that, in the opinion of the Minister, the disclosure (other than to the Ombudsman or a member of his or her staff including an investigation officer) of that document, that part of a document, that information or that thing or of documents, parts of a document, information or things of that class, would, for the reasons stated in the notice, be prejudicial to the public interest or to security.

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

(4) Where a notice is given under *subsection (3)(a)*, the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) shall not disclose any—

- (a) document, part of a document, information or thing specified in the notice, or
- (b) class of document, part of a document, information or thing specified in the notice,

to any person or for any purpose and nothing in this Act shall be construed as authorising or requiring the Ombudsman or a member of the staff of the Ombudsman (including an investigation officer) to disclose to any person or for any purpose anything referred to in *paragraph (a) or (b)*.

Committee of Public Accounts.

11.—(1) The Ombudsman shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Ombudsman is required to prepare under this Act,

- (b) the economy and efficiency of the Ombudsman in the use of resources,
- (c) the systems, procedures and practices employed by the Ombudsman for the purpose of evaluating the effectiveness of the operation of the office of the Ombudsman, and
- (d) any matter affecting the Ombudsman referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In the performance of his or her duties under this section, the Ombudsman shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Oireachtas
committees.

12.—(1) In this section “committee” means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee referred to in *section 11*, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such a committee.

(2) Subject to *subsection (3)*, the Ombudsman shall, at the request in writing of a committee, attend before it to account for the general administration of the Office of the Ombudsman.

(3) The Ombudsman shall not be required to account before a committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(4) Where the Ombudsman is of the opinion that a matter in respect of which he or she is requested to account before a committee is a matter to which *subsection (3)* applies, he or she shall inform the committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the committee at a time when the Ombudsman is before it, the information shall be so conveyed in writing.

(5) Where the Ombudsman has informed a committee of his or her opinion in accordance with *subsection (4)* and the committee does not withdraw the request referred to in *subsection (2)* in so far as it related to a matter the subject of that opinion—

- (a) the Ombudsman may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for a determination as to whether the matter is one to which *subsection (3)* applies, or
- (b) the chairperson of the committee may, on behalf of the committee, make such an application,

and the High Court may determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the Ombudsman shall not attend before the committee to account for the matter the subject of the application.

(7) Where the High Court determines that the matter concerned is one to which *subsection (3)* applies, the committee shall withdraw the request referred to in *subsection (2)*.

(8) Where the High Court determines that *subsection (3)* does not apply, the Ombudsman shall attend before the committee to give account for the matter.

Amendment of section 114 of Act of 1954.

13.—Section 114 of the Act of 1954 is amended—

- (a) in subsection (1), by the substitution of “Chief of Staff” for “Minister”,
- (b) in subsection (2), by the deletion of “who, if so required by the man, shall report on the matter of complaint to the Minister”, and
- (c) by the insertion after subsection (3) of the following subsections:

“(3A) The Chief of Staff shall cause every complaint seeking redress of wrongs under this section that is made in writing to be notified to the Minister and the Ombudsman for the Defence Forces as soon as practicable following the making of such complaint.

(3B) Where the Ombudsman for the Defence Forces has made a notification in writing in accordance with *section 7* of the *Ombudsman (Defence Forces) Act 2004*, that *section 5(1)(c)*, *section 5(1)(d)(ii)*, *section 5(1)(e)(ii)* or *section 5(1)(g)* of the *Ombudsman (Defence Forces) Act 2004* applies to a complaint made under that Act by an officer or a man, the officer or the man, as the case may be, may submit that complaint to the Minister for determination by him or her.

(3C) The Minister may make regulations concerning the manner in which a notification referred to in subsection (3A) of this section and a report on such notification are to be made and the manner in which a complaint is to be submitted under subsection (3B) and without prejudice to the generality of the foregoing, the regulations may—

- (a) specify a period or periods within which such reports are to be submitted and complaints referred, and
- (b) the form and content of such notifications, reports and submissions.”.

Staff

14.—(1) The Minister may, with the consent of the Minister for Finance, appoint such and so many persons to be members of the staff of the Ombudsman as he or she may from time to time determine.

(2) A member of the staff of the Ombudsman shall be a civil servant in the Civil Service of the State.

(3) 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 the staff of the Ombudsman shall be the Ombudsman.

(4) The Ombudsman may delegate to any member of the staff of the Ombudsman any function of the Ombudsman under this Act other than the functions referred to in *sections 7(5), 7(7), 11* and *12*.

(5) In this section “civil servant in the Civil Service of the State” means a person holding a position in the Civil Service of the State.

Investigation officers

15.—(1) The Ombudsman may appoint in writing, either generally or in respect of any matter or event, such and so many members of the staff of the Ombudsman to be investigation officers for the purposes of all or any of the provisions of this Act and a person so appointed shall be referred to as an “investigation officer”.

(2) Every investigation officer appointed under this section shall be furnished with a warrant of appointment as an investigation officer, and when exercising any power conferred on him or her by this section as an investigation officer, shall, if requested by a person affected, produce the warrant or a copy of it to that person.

(3) The Ombudsman may revoke an appointment made under *subsection (1)*.

(4) An investigation officer may, for the purpose of obtaining any information which may be required in relation to the matter under investigation and in order to enable the Ombudsman to perform his or her functions under this Act, do any one or more of the following—

- (a) at all reasonable times enter any premises, including, subject to regulations under *section 9(5)*, a military installation, in which there are reasonable grounds to believe that any activity in connection with a complaint is or has been carried on or that books, records or other documents in relation to a complaint are kept and search and inspect the premises and any books, records or other documents on the premises,
- (b) require a member of the Defence Forces or any other person to produce to the investigation officer any records and in the case of information that is kept in a non-legible form to reproduce it in a legible form or to give to him or her such information as the investigation officer may reasonably require in relation to any entries in such records,
- (c) inspect and take copies of or extracts from any such records, file, papers or electronic information system in, at or on the place, including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form,
- (d) require any person to give to the investigation officer any information which the officer may reasonably require in relation to a preliminary examination or an investigation under this Act,
- (e) require any person to give to the investigation officer such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable the investigation officer to exercise any of the powers conferred on him or her by or under this Act, and
- (f) summon, at any reasonable time, any person to give to the investigation officer any information which he or she may reasonably require and to produce to the investigation officer any records which are in the power or control of that person.

Accounts and audits.

16.—(1) The Ombudsman shall keep in such form as may be approved by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of moneys received or expended by him or her, including an income and expenditure account and a balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.

(2) Accounts kept in pursuance of this section shall be submitted, not later than 3 months after the end of the financial year to which they relate, by the Ombudsman to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the income and expenditure account, the balance sheet and of any other accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

Annotations

Modifications (not altering text):

- C3** Functions transferred and references to “Department of Finance” and “Minister for Finance” construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

(b) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...
No. 36 of 2004	Ombudsman (Defence Forces Act) 2004	Section 16
...

Regulations.

17.—Every regulation made 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.

Expenses.

18.—Any expenses incurred by the Minister 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.

19.—(1) This Act may be cited as the Ombudsman (Defence Forces) Act 2004.

(2) This Act comes into operation on such day or days as the Government may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.

Annotations**Editorial Notes:**

E3 Power pursuant to section exercised (31.08.2005 and 1.12.2005) by *Ombudsman (Defence Forces) Act 2004 (Commencement) Order 2005* (S.I. No. 568 of 2005).

3. (1) Subject to paragraph (2) of this Article, the 1st day of December 2005 is appointed as the day on which the Act shall come into operation.

(2) The 31st day of August 2005 is appointed as the day on which sections 1, 2, 3, 14, 16, 17, 18 and 19 of the Act shall come into operation.

(3) Nothing in paragraph (2) of this Article results in section 5(1)(g) of the Act having effect by reference to a date earlier than the 1st day of December 2005.