Changes to Legislation: as of 13 October 2026, this Act is up to date with all changes known to be in force.



Number 22 *of* 2002

OMBUDSMAN FOR CHILDREN ACT 2002

REVISED

Updated to 26 December 2018

This Revised Act is an administrative consolidation of the *Ombudsman for Children Act 2002*. 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 *Public Service Superannuation (Age of Retirement) Act 2018* (39/2018), enacted 26 December 2018, and all statutory instruments up to and including *European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018* (S.I. No. 656 of 2018), made 20 December 2018, 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.



Number 22 *of* 2002

OMBUDSMAN FOR CHILDREN ACT 2002

REVISED ACT

Updated to 26 December 2018

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Number 22 *of* 2002

OMBUDSMAN FOR CHILDREN ACT 2002

REVISED ACT

Updated to 26 December 2018

AN ACT TO PROVIDE FOR THE APPOINTMENT AND FUNCTIONS OF AN OMBUDSMAN FOR CHILDREN, AND FOR PURPOSES CONNECTED THEREWITH. [1*st May*, 2002]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 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 and sch. 1, subject to transitional provisions in arts. 5-9, in effect as per art. 1(2).

C2

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.

...

Schedule 1

Part 2

...

1922 to 2011 Enactments

...

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...

Number and Year (1)	Short Title (2)	Provision (3)
No. 22 of 2002	Ombudsman for Children Act 2002	Sections 14 and 17
...	...	...

C3 Functions transferred and references to "Department of Health and Children" and "Minister for Health and Children" construed (3.06.2011) by *Office of the Minister for Children and Youth Affairs (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 218 of 2011), arts. 2, 3(1), (3) and sch., in effect as per art. 1(2).

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Children and Youth Affairs.

(2) References to the Department of Health and Children contained in any Act or any instrument made thereunder and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Children and Youth Affairs.

3. (1) The functions vested in the Minister for Health and Children by or under the Acts specified in the Schedule are transferred to the Minister for Children and Youth Affairs.

...

(3) References to the Minister for Health and Children contained in any Act or instrument made thereunder and relating to any functions transferred by this Article shall, from the commencement of this Order, be construed as references to the Minister for Children and Youth Affairs.

...

SCHEDULE

...

Ombudsman for Children Act 2002 (No. 22 of 2002)

...

C4 Functions transferred (1.01.2005) by *Health Act 2004* (42/2004), s. 59, S.I. No. 887 of 2004.

Transfer of functions of specified bodies to Executive.

59.—(1) The functions that, immediately before the establishment day, were the functions of a specified body under or in connection with the enactments referred to in *Schedule 3* are, by this Act, transferred to the Executive on that day.

(2) If a provision of an enactment referred to in *Schedule 3*, or a provision of an instrument made under such enactment, does not come into effect until on or after the establishment day, a function that on the passing of that enactment or the making of that instrument was assigned under or in connection with that provision to a specified body is, by this Act, transferred to the Executive on the commencement of that provision.

(3) The functions transferred by this Act to the Executive include the functions specified in any enactment referred to in *Schedule 3* as a function of the following:

(*a*) the chief executive officer of a health board;

(*b*) the Regional Chief Executive of the Eastern Regional Health Authority;

(*c*) the area chief executive of an Area Health Board.

(4) This section does not apply in relation to the functions of the Hospital Bodies Administrative Bureau.

...

SCHEDULE 3

Transfer of Functions and References to Functional Areas

...

45. Ombudsman for Children Act 2002

...

Editorial Notes:

E1 Ombudsman for Children excluded from definition of public bodies insofar as it relates to records concerning an examination or investigation carried out by Ombudsman under Act (14.10.2014) by *Freedom of Information Act 2014* (30/2014), s. 6 and sch. 1 part 1(aa), commenced as per s. 1(2), subject to transitional provisions in s. 1(3) and (4).

E2 Option of referral of complaints to Ombudsman for Children confirmed (1.01.2014) by *Child and Family Agency Act 2013* (40/2013), s. 69(1), S.I. No. 502 of 2013.

E3 Option of referral of complaints to Ombudsman for Children confirmed (1.01.2007) by *Health Act 2004* (42/2004), s. 54(1), S.I. No. 651 of 2006.

PART 1

Preliminary and General

Short title and commencement.

1.—(1) This Act may be cited as the Ombudsman for Children Act, 2002.

(2) This Act shall come into operation on such day or days, not later than 2 years after the passing of this Act, as the Minister 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 or different provisions.

Annotations

Editorial Notes:

E4 Power pursuant to subs. (2) exercised (21.04.2004) by *Ombudsman for Children Act 2002 (Commencement) Order 2004* (S.I. No. 925 of 2004).

2. The 25th day of April 2004 is appointed as the day on which the Ombudsman for Children Act 2002 (No. 22 of 2002) (except insofar as it is already in operation) shall come into operation.

E5 Power pursuant to subs. (2) exercised (18.12.2003) by *Ombudsman For Children (Section 4) (Commencement) Order 2003* (S.I. No. 712 of 2003).

2. The day of 18 December, 2003 is appointed as the day on which section 4 of the Ombudsman for Children Act (No. 22 of 2002) comes into operation.

Interpretation.

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

"Act of 1980" means Ombudsman Act, 1980;

"Act of 1998" means Education Act, 1998;

"Act of 1999" means Health (Eastern Regional Health Authority) Act, 1999;

"action" includes decision, failure to act and omission;

"child" means a person under the age of 18 years and "children" shall be construed accordingly;

"civil servant" has the meaning assigned to it by the Civil Service Regulation Act, 1956;

"functions" includes powers and duties and a reference to the performance of functions includes, as respects powers and duties, a reference to the exercise of powers and the carrying out of duties;

F1**[**...**]**

"local authority" means a local authority for the purposes of the Local Government Act, 2001;

"Minister" means Minister for Health and Children;

F2**[**'public body' means a body specified in or under the First Schedule to the Act of 1980 or a reviewable agency by virtue of an order under section 1A of that Act, but only to the extent that and in relation to functions in respect of which the body is subject to the Act of 1980;**]**

"school" means a recognised school within the meaning of the Act of 1998;

F3**[**'voluntary hospital' means a hospital which is substantially funded by means of an arrangement with the Health Service Executive under section 38 of the Health Act 2004 and the governing body of which is not the Health Service Executive or a committee of it.**]**

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

(3) In this Act, unless the context otherwise requires, references to a public body (other than a Department of State) include—

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

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

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

(4) In this Act, unless the context otherwise requires, references to a school include references to the board of management of the school established under section 14 of the Act of 1998, the Principal (within the meaning of section 23 of that Act) of the school, the teachers and other staff of the school.

(5) In this Act, unless the context otherwise requires, references to a voluntary hospital include references to the owner, manager or governing body (in each case by whatever name called) of the hospital and the officers and staff of the hospital.

(6) In this Act—

(*a*) a reference to a section or Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,

(*b*) 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, and

(*c*) F4**[**...**]** a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any other enactment (including this Act).

Annotations

Amendments:

F1 Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23, S.I. No. 887 of 2004.

F2 Substituted (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 22(a), commenced as per s. 1(3).

F3 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23, S.I. No. 887 of 2004.

F4 Deleted (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 22(a), commenced as per s. 1(3).

Expenses.

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

PART 2

Ombudsman for Children

Chapter 1

Appointment, terms and conditions of office

Appointment and term of office.

4.—(1) There is established the office of Ombudsman for Children and the holder of the office shall be known as the Ombudsman for Children.

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

(3) A person appointed to be the Ombudsman for Children—

(*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 where—

(i) he or she has become incapable through ill health of effectively performing the functions of the office,

(ii) he or she is adjudicated bankrupt,

(iii) he or she is convicted on indictment by a court of competent jurisdiction and sentenced to imprisonment,

(iv) he or she has failed without reasonable excuse to discharge the functions of the office for a continuous period of 3 months beginning not earlier than 6 months before the day of removal, or

(v) for any other stated reason, he or she should be removed,

and then only upon resolution passed by Dáil Éireann and Seanad Éireann calling for his or her removal,

F5**[**(*c*) shall in any case vacate the office on attaining the age of 70 years or, where a higher age is prescribed by order under section 3A(2) of the Public Service Superannuation (Miscellaneous Provisions) Act 2004 for the purposes of that Act, that age but, where the person is a new entrant (within the meaning of that Act) appointed on or after 1 April 2004, the requirement to vacate office on grounds of age shall not apply.**]**

(4) Subject to this section, a person appointed to be the Ombudsman for Children shall hold the office of Ombudsman for Children for a term of 6 years and may be re-appointed once only to that office for a second term.

(5) (*a*) Where a person who holds the office of Ombudsman for Children is—

(i) nominated as a member of Seanad Éireann or elected as a member of either House of the Oireachtas,

(ii) elected to be a representative in the European Parliament or is regarded pursuant to section 19 of the European Parliament Elections Act, 1997, as having been elected to that Parliament, or

(iii) becomes a member of a local authority,

he or she shall thereupon cease to hold the office of Ombudsman for Children.

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

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

(ii) a representative in the European Parliament, or

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

shall, while he or she is so entitled under *subparagraph (i)* or *(iii)* or is such a representative under *subparagraph (ii)*, be disqualified for holding the office of Ombudsman for Children.

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

Annotations

Amendments:

F5 Substituted by *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004), s. 3A and sch. 2 part 3 as inserted (26.12.2018) by *Public Service Superannuation (Age of Retirement) Act 2018* (39/2018), ss. 3, 7 and sch., commenced on enactment.

Editorial Notes:

E6 Previous affecting provision: subs. (3)(c) amended (25.03.2004) by *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004), s. 3 and sch. 2 part 2, commenced on enactment; para. (c) substituted as per F-note above.

Salary, allowances for expenses and superannuation.

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

(2) (*a*) The Minister shall, 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 for Children.

(*b*) A scheme under *paragraph (a)* shall fix the conditions for payment of superannuation benefits under it and different conditions may be fixed by reference to the different circumstances pertaining to the particular officeholder concerned or his or her dependants at or before the time the question of eligibility for such payment falls to be considered.

(*c*) The Minister may at any time, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes amending or revoking a scheme under this subsection, including a scheme under this paragraph.

(*d*) 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 persons who have held the office of Ombudsman for Children except in accordance with a scheme under this subsection or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.

(*e*) Any dispute that arises as to the claim of any person to, or the amount of, any superannuation benefit payable pursuant to a scheme under this subsection shall be submitted to the Minister who shall refer such dispute to the Minister for Finance, whose decision shall be final.

(*f*) A scheme under this subsection 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 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(*g*) In this subsection "superannuation benefits" means pensions, gratuities or other allowances payable on resignation, retirement or death.

Annotations

Editorial Notes:

E7 Any defined benefit scheme established under section is excluded from *Pensions Act 1990* (25/1990), Part III, by *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002* (S.I. No. 279 of 2002), reg. 11 as substituted (26.02.2009) by *Occupational Pension Schemes (Preservation of Benefits)(Amendment) Regulations 2009* (S.I. No. 70 of 2009), reg. 2.

E8 Any defined benefit scheme established under section is excluded from *Pensions Act 1990* (25/1990), Part IV, by *Occupational Pension Schemes (Funding Standard) Regulations 2008* (S.I. No. 419 of 1993), reg. 6 and sch. C, sch. C as substituted (1.08.2008) by *Occupational Pension Schemes (Funding Standard)(Amendment) Regulations 2008* (S.I. No. 295 of 2008), reg. 4; (18.04.2013) by *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2013* (S.I. No. 135 of 2013); and (16.06.2014) by *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2014* (S.I. No. 268 of 2014).

Chapter 2

Performance of functions

Performance of functions.

6.—(1) The Ombudsman for Children shall be independent in the performance of his or her functions under this Act.

(2) The Ombudsman for Children shall, in the performance of his or her functions under *sections 8* and *9*, have regard to the best interests of the child concerned and shall, in so far as practicable, give due consideration, having regard to the age and understanding of the child, to his or her wishes.

Chapter 3

Rights and welfare of children

Function to promote rights and welfare of children.

7.—(1) The Ombudsman for Children shall promote the rights and welfare of children and, without prejudice to the generality of the foregoing, he or she shall—

(*a*) advise the Minister or any other Minister of the Government, as may be appropriate, on the development and co-ordination of policy relating to children,

(*b*) encourage public bodies, schools and voluntary hospitals to develop policies, practices and procedures designed to promote the rights and welfare of children,

(*c*) collect and disseminate information on matters relating to the rights and welfare of children,

(*d*) promote awareness among members of the public (including children of such age or ages as he or she considers appropriate) of matters (including the principles and provisions of the Convention) relating to the rights and welfare of children and how those rights can be enforced,

(*e*) highlight issues relating to the rights and welfare of children that are of concern to children,

(*f*) exchange information and co-operate with the Ombudsman for Children (by whatever name called) of other states,

(*g*) monitor and review generally the operation of legislation concerning matters that relate to the rights and welfare of children, and

(*h*) monitor and review the operation of this Act and, whenever he or she thinks it necessary, make recommendations to the Minister or in a report under *section 13(7)* or both for amending this Act.

(2) (*a*) The Ombudsman for Children shall establish structures to consult regularly with groups of children that he or she considers to be representative of children for the purposes of his or her functions under this section.

(*b*) In consultations under this subsection, the views of a child shall be given due weight in accordance with the age and understanding of the child.

(3) The Ombudsman for Children may undertake, promote or publish research into any matter relating to the rights and welfare of children.

(4) The Ombudsman for Children may, on his or her own initiative, and shall, at the request of the Minister or any other Minister of the Government, give advice to the Minister of the Government concerned on any matter (including the probable effect on children of the implementation of any proposals for legislation) relating to the rights and welfare of children.

(5) For the purposes of this section, persons under the age of 18 years who are enlisted members of the Defence Force shall not be regarded as children in any case where they are subject to military law under the Defence Forces Acts, 1954 to 1998.

(6) In this section "the Convention" means the United Nations Convention on the Rights of the Child done at New York on 20 November 1989, as amended by any protocol thereto that is for the time being in force in the State.

Chapter 4

Complaints against public bodies, schools and voluntary hospitals

Function to examine and investigate complaints against public bodies.

8.—Subject to this Act, the Ombudsman for Children may investigate any action taken (being an action taken in the performance of administrative functions) by or on behalf of a public body where, upon having carried out a preliminary examination of the matter, it appears to the Ombudsman for Children that—

(*a*) the action has or may have adversely affected a child, and

(*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) based on an undesirable administrative practice, or

(vii) otherwise contrary to fair or sound administration.

Annotations

Editorial Notes:

E9 Ombudsman precluded from investigating actions to which section applies by *Ombudsman Act 1980* (26/1980), s. 5(1)(f), as substituted (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 8(a), commenced as per s. 1(3).

Function to examine and investigate complaints against schools and voluntary hospitals.

9.—(1) Subject to this Act, the Ombudsman for Children may investigate any action taken (being an action taken in the performance of administrative functions) by or on behalf of—

(*a*) a school in connection with the performance of its functions under section 9 of the Act of 1998, F6**[**or**]**

F7**[**(*b*) a voluntary hospital in connection with the provision by it of health and personal social services within the meaning of the Health Act 2004 in accordance with an arrangement made by it under section 38 of that Act with the Health Service Executive,**]**

(c) F8**[**...**]**

where, upon having carried out a preliminary examination of the matter, it appears to the Ombudsman for Children that—

(i) the action has or may have adversely affected a child, and

(ii) the action was or may have been—

(I) taken without proper authority,

(II) taken on irrelevant grounds,

(III) the result of negligence or carelessness,

(IV) based on erroneous or incomplete information,

(V) improperly discriminatory,

(VI) based on an undesirable administrative practice, or

(VII) otherwise contrary to fair or sound administration.

(2) The Ombudsman for Children may investigate an action under *subsection (1)(a)* only where the procedures prescribed pursuant to section 28 of the Act of 1998 have been resorted to and exhausted in relation to the action.

(3) The references to a voluntary hospital in *paragraphs (b)* and *(c)* of *subsection (1)* do not include references to—

(*a*) persons when acting on behalf of the voluntary hospital concerned and (in the opinion of the Ombudsman for Children) solely in the exercise of clinical judgement in connection with the diagnosis of illness or the care or treatment of a patient, whether formed by the person taking the action or by any other person, or

(*b*) the voluntary hospital concerned when acting on the advice of persons acting as aforesaid, being actions of the voluntary hospital that, in the opinion of the Ombudsman for Children, were taken solely on such advice.

(4) F8**[**...**]**

Annotations

Amendments:

F6 Inserted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23 item 2(a), S.I. No. 887 of 2004.

F7 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23 item 2(b), S.I. No. 887 of 2004.

F8 Deleted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23 item 2(c), S.I. No. 887 of 2004.

Editorial Notes:

E10 *Ombudsman (Amendment) Act 2012* (38/2012), s 22(b), provides for the deletion of the words "specified in Schedule 2" from subs. (1)(c). However, subs. (1)(c) was effectively deleted by the substitution provided by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23 item 2(b).

E11 The provision amending subs. (1)(a) above (*Health Act 2004*, s. 75 and sch. 6 part 23 item 2(a)) refers to an insertion after "the Act of 1988", but the intended wording appears to be "the Act of 1998".

Preliminary examination and investigation of complaints.

10.—(1) (*a*) The Ombudsman for Children shall not investigate an action under *section 8* or *9* unless—

(i) a complaint has been made to him or her in relation to the action by or on behalf of a child, or

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

(*b*) A complaint may be made to the Ombudsman for Children on behalf of a child by—

(i) a parent of the child, or

(ii) any other person who, by reason of that person's relationship (including professional relationship) with the child and his or her interest in the rights and welfare of the child, is considered by the Ombudsman for Children to be a suitable person to represent the child.

(*c*) If a complaint is made to the Ombudsman for Children by a child or on behalf of a child by a person other than a parent of the child, the Ombudsman for Children shall, before investigating the complaint, inform a parent of the child of the complaint.

(*d*) In this subsection "parent", in relation to a child, means the mother or father of the child or, where the child has been adopted under the Adoption Acts, 1952 to 1998, or outside of the State, the adopter or surviving adopter of the child, a foster parent of the child, a guardian of the child appointed under the Guardianship of Children Acts, 1964 to 1997, or other person acting in *loco parentis* to the child pursuant to a statutory power or order of a Court.

(2) The Ombudsman for Children may—

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

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

if he or she becomes of opinion that—

(i) the complaint is trivial or vexatious,

(ii) the child making the complaint, or on whose behalf the complaint is made, has an insufficient interest in the matter,

(iii) the child making the complaint, or on whose behalf the complaint is made, has not taken reasonable steps to seek redress in respect of the subject

matter of the complaint or, if he or she has, has not been refused redress, or

(iv) the lapse of time since the occurrence of the matter complained of makes effective redress impossible or impracticable.

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

(4) A preliminary examination or investigation by the Ombudsman for Children shall not affect the validity of the action examined or 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.

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

(6) Nothing in *section 8(a)* or *9(1)(i)* or *subsection (1)(a)* shall be construed as prohibiting the investigation by the Ombudsman for Children of—

(*a*) an action that, in the opinion of the Ombudsman for Children, has or may have affected any child other than in an official capacity, or

(*b*) an action the subject of a complaint to him or her by an individual acting other than in an official capacity.

(7) F9**[**...**]**

Annotations

Amendments:

F9 Repealed (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 22(c), commenced as per s. 1(3).

Exclusions.

11.—(1) The Ombudsman for Children shall not investigate any action taken by or on behalf of a public body, school or voluntary hospital—

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

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

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

(iii) the child affected by the action has a right of appeal, reference or review to or before a person other than a public body or, if appropriate, the school or voluntary hospital concerned,

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

(*c*) relating to recruitment or appointment to any office or employment in a Department of State or by any other public body, school or voluntary hospital,

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

(i) upon and subject to which a person—

(I) holds any office, or

(II) is employed in a Department of State or by any other public body, school or voluntary hospital,

(ii) of a contract for services,

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

(*e*) if the action is one—

(i) taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship,

(ii) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or disqualification imposed by a Court exercising criminal jurisdiction, or

(iii) taken in the administration of the prisons or other places for the custody or detention of children committed to custody or detention by the Courts other than reformatory schools, or industrial schools, certified under Part IV of the Children Act, 1908,

(*f*) if the action relates to the results of an examination (within the meaning of section 49 of the Act of 1998),

(*g*) in—

(i) a case where a complaint is made to the Ombudsman for Children in relation to the action, if the complaint is not made before the expiration of two years from the time of the action or the time the child making the complaint, or on whose behalf the complaint is made, became aware of the action, whichever is the later,

(ii) any other case, if the investigation is not commenced before the expiration of two years from the time of the action, or

(*h*) if the action—

(i) is taken before the commencement of this Act, and

(ii) is not one that may be the subject of a complaint to the Ombudsman under the Act of 1980.

(2) (*a*) *Subsection (1)(e)(iii)* shall cease to have effect on and after such date as may be specified in an order made by the Minister with the consent of the Minister for Justice, Equality and Law Reform.

(*b*) An order made under this subsection shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(3) Notwithstanding *subsection (1)*, the Ombudsman for Children may investigate—

(*a*) an action to which *paragraph (a)* of that subsection relates if it appears to him or her that special circumstances make it proper to do so,

(*b*) an action that would contravene *paragraph (g)* of that subsection if it appears to him or her that special circumstances make it proper to do so, or

(*c*) insurability and entitlement to benefit under the Social Welfare Acts.

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

(*a*) a Department of State whose functions are assigned to that Minister of the Government, or

(*b*) a public body (other than a Department of State) whose business and functions are comprised in such a Department of State or in relation to which functions are performed by such a Department of State,

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

Annotations

Modifications (not altering text):

C5 Application of subs. (1)(e)(iii) ceased (1.07.2012) by *Ombudsman for Children Act 2002 (Section 11(2)(a)) Order 2012* (S.I. No. 210 of 2012), art. 2.

2. Subsection (1)(*e*)(iii) of section 11 of the Ombudsman for Children Act 2002 shall cease to have effect on and after 1 July 2012.

Amendment of section 5 of Act of 1980.

12.—(1) Section 5(1) of the Act of 1980 is amended by—

(*a*) the deletion of "or" after paragraph (*f*),

(*b*) the substitution in paragraph (*g*) of "this Act, or" for "this Act;", and

(*c*) the insertion of the following paragraph after paragraph (*g*):

"(*gg*) if the action is one to which *section 8* of the *Ombudsman for Children Act, 2002*, applies, being an action that could otherwise be investigated by the Ombudsman under this Act;".

(2) Notwithstanding the amendment effected by *subsection (1)*, anything commenced but not completed by the Ombudsman under the Act of 1980 before the commencement of this section may be carried on and completed by the Ombudsman after such commencement as if this section had not been enacted.

Chapter 5

Examination and investigation of complaints

Reports, etc.

13.—(1) In any case where a complaint is made to the Ombudsman for Children in relation to an action and he or she decides not to carry out an investigation under this Act into the action or to discontinue such an investigation, he or she shall send to the child who made the complaint, or to the person who made the complaint on behalf of the child—

(*a*) a statement in writing of his or her reasons for the decision, and

(*b*) if the decision follows the receipt by the Ombudsman for Children of a request under *section 11(4)*, a copy of the request and of the statement in writing of the reasons for the request attached to the request,

and he or she shall send to such other (if any) person as he or she considers appropriate such statement in writing in relation to the matter as he or she considers appropriate.

(2) In any case where the Ombudsman for Children conducts an investigation under this Act, he or she shall send a statement in writing of the result of the investigation—

(*a*) to the public body, school or voluntary hospital concerned,

(*b*) (i) to the Department of State in which are comprised the business and functions of, or which performs functions in relation to, any public body (other than a Department of State) to whom a statement is sent under *paragraph (a)*,

(ii) where the investigation relates to an action taken by or on behalf of a school, to the Department of Education and Science, or

F10**[**(iii) where the investigation relates to an action taken by or on behalf of a voluntary hospital, to the Health Service Executive,**]**

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

(*d*) 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, it appears to the Ombudsman for Children that the action adversely affected a child and fell within *paragraph (b)* of *section 8* or *paragraph (ii)* of *section 9(1)*, as the case may be, he or she may recommend to the public body, school or voluntary hospital concerned—

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

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

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

and, if the Ombudsman for Children thinks fit to do so, he or she may request the public body, school or voluntary hospital concerned to notify him or her within a specified time of its, his or her response to the recommendation.

(4) Where the Ombudsman for Children carries out an investigation under this Act into an action the subject of a complaint to him or her, he or she shall notify the child who made the complaint, or the person who made the complaint on behalf of the child, of the result of the investigation, the recommendation (if any) made by him or her under *subsection (3)* in relation to the matter and the response (if any) made to it by the public body, school or voluntary hospital to whom it was given.

(5) Where it appears to the Ombudsman for Children that the measures taken or proposed to be taken in response to a recommendation under *subsection (3)* are not satisfactory, he or she 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 for Children shall not make a finding or criticism adverse to a person in a statement under *subsection (1)* or *(2)*, or in a recommendation or report under *subsection (3)* or *(5)*, without having afforded to the person an opportunity to

consider the finding or criticism and to make representations in relation to it to him or her.

(7) The Ombudsman for Children shall cause a report on the performance of his or 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 or she thinks fit. The terms of a request under *section 11(4)* 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.

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

(*b*) the publication by the Ombudsman for Children—

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

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

(iii) to a person mentioned in *subsection (3)* of a recommendation made to such person by the Ombudsman for Children in pursuance of that subsection,

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

Annotations

Amendments:

F10 Substituted (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23, S.I. No. 887 of 2004.

Powers in respect of preliminary examinations and investigations.

14.—The Ombudsman for Children shall, in respect of preliminary examinations, or investigations, by him or her under this Act in relation to any action taken by or on behalf of a public body, school or voluntary hospital, have all the powers of the Ombudsman under section 7 of the Act of 1980 in respect of preliminary examinations, or investigations, by him or her under that Act, and that section shall apply to such examinations, or investigations, under this Act as it applies to such examinations, or investigations, under that Act with the following modifications—

(*a*) the reference in subsection (5) of that section to the Minister shall be construed as a reference to the Minister for Health and Children, with the consent of the Minister for Finance,

(*b*) the reference in subsection (7) of that section to section 4(7) of that Act shall be construed as a reference to *section 10(4)*,

and any other necessary modifications.

Conduct of investigations.

15.—Section 8 of the Act of 1980 shall apply to the conduct by the Ombudsman for Children of investigations by him or her under this Act as it applies to the conduct by the Ombudsman of investigations by him or her under that Act with the modification that the reference in subsection (2)(*a*) of that section to any F11**[**reviewable agency (within the meaning of that Act) concerned**]** shall be construed as a reference to any public body, school or voluntary hospital concerned, and with any other necessary modifications.

Annotations

Amendments:

F11 Substituted (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 22(d), commenced as per s. 1(3).

Secrecy of information.

16.—Section 9 of the Act of 1980 shall apply to information, documents or things obtained by the Ombudsman for Children or members of his or her staff under this Act as it applies to information, documents or things obtained by the Ombudsman or his or her officers under that Act with any necessary modifications.

Chapter 6

Miscellaneous

Accounts and audits.

17.—(1) The Ombudsman for Children shall keep in such form as may be approved of 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 in the performance of his or her functions under this Act, 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 for Children 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 (if any) accounts kept pursuant to this section as the Minister, after consultation with the Minister for Finance, may direct and a copy of the report of the Comptroller and Auditor General on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

Attendance before Public Accounts Committee.

18.—(1) The Ombudsman for Children 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 for Children is required to prepare under this Act,

(*b*) the economy and efficiency of the Ombudsman for Children in the use of resources,

(*c*) the systems, procedures and practices employed by the Ombudsman for Children for the purposes of evaluating the effectiveness of the operation of the office of the Ombudsman for Children, and

(*d*) any matter affecting the Ombudsman for Children 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 for Children 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.

Attendance before other committees of Houses of Oireachtas.

19.—(1) Subject to *subsection (2)*, the Ombudsman for Children shall, at the request in writing of a committee, attend before it to account for the general administration of the office of the Ombudsman for Children as may be required by the committee.

(2) The Ombudsman for Children shall not be required to account to a committee for any matter—

(*a*) relating solely to an individual complaint made to him or her under this Act in relation to an action, or

(*b*) which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

(3) Where the Ombudsman for Children is of opinion that a matter in respect of which he or she is requested to give account before a committee is a matter to which *subsection (2)* applies, he or she shall inform the committee of that opinion and the reasons therefor and, unless the information is conveyed to the committee at a time when the Ombudsman for Children is before it, the information shall be so conveyed in writing.

(4) Where the Ombudsman for Children has informed a committee of his or her opinion in accordance with *subsection (3)* and the committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to a matter the subject of that opinion—

(*a*) the Ombudsman for Children 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 (2)* 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.

(5) Pending the determination of an application under *subsection (4)*, the Ombudsman for Children shall not attend before the committee to give account for the matter the subject of the application.

(6) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the committee shall withdraw the request referred to in *subsection (1)* in relation to the matter, but if the High Court determines that *subsection (2)* does not apply, the Ombudsman for Children shall attend before the committee to give account for the matter.

(7) In this section "committee" means a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas, other than—

(*a*) the Committee referred to in *section 18*,

(*b*) the Committee on Members' Interests of Dáil Éireann, or

(*c*) the Committee on Members' Interests of Seanad Éireann,

or a subcommittee of such a committee.

Amendment of Freedom of Information Act, 1997.

20.—The Freedom of Information Act, 1997, is amended—

(*a*) in section 2(1), by the insertion of the following paragraph after paragraph (*j*) in the definition of "head of a public body":

"(*jj*) in relation to the office of the Ombudsman for Children, the Ombudsman for Children,",

(*b*) in section 46(1)(*c*)—

(i) by the deletion of "or" at the end of subparagraph (ii) and the substitution of the following subparagraphs for subparagraph (iii):

"(iii) an examination or investigation carried out by the Ombudsman under the Ombudsman Act 1980, or

(iv) an examination or investigation carried out by the Ombudsman for Children under the *Ombudsman for Children Act, 2002*,",

(ii) in clause (II), by the substitution of ", the Office of the Ombudsman or the office of the Ombudsman for Children" for "or the Office of the Ombudsman",

and

(*c*) in paragraph 1(5) of the First Schedule, by the insertion of "the office of the Ombudsman for Children,".

Staff.

21.—(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 for Children as the Minister may determine.

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

(3) The Ombudsman for Children may delegate to any member of his or her staff any of his or her functions under this Act except those conferred by *subsections (5)* and *(7)* of *section 13*, *section 18* or by this section.

(4) The Minister may delegate to the Ombudsman for Children the powers exercisable by him or her under the Civil Service Commissioners Act, 1956, and the Civil Service Regulation Acts, 1956 to 1996, as the appropriate authority in relation to members of the staff of the Ombudsman for Children, and, if he or she does so, then, so long as the delegation remains in force—

(*a*) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Ombudsman for Children, and

(*b*) the Ombudsman for Children shall, in lieu of the Minister, be, for the purposes of this Act, the appropriate authority in relation to members of the staff of the Ombudsman for Children.

Section 2

SCHEDULE 1

F12**[**...**]**

Annotations

Amendments:

F12 Repealed (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 22(e), commenced as per s. 1(3).

Editorial Notes:

E12 Previous affecting provision: schedule amended (6.07.2011) by *Ministers and Secretaries (Amendment) Act 2011* (10/2011), s. 90, S.I. No. 401 of 2011; deleted as per F-note above.

E13 Previous affecting provision: schedule amended (1.11.2010) by *Adoption Act 2010* (21/2010), s. 168, S.I. No. 511 of 2010; deleted as per F-note above.

E14 Previous affecting provision: schedule amended (1.05.2007) by *Consumer Protection Act 2007* (19/2007), s. 40(1) and sch. 3 part 1, S.I. No. 178 of 2007; deleted as per F-note above.

E15 Previous affecting provision: schedule amended (4.11.2006) by *Registration of Deeds and Title Act 2006* (12/2006), s. 78(2), S.I. No. 511 of 2006; deleted as per F-note above.

E16 Previous affecting provision: schedule amended (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 23, S.I. No. 887 of 2004; deleted as per F-note above.

Section 9(1)(c).

SCHEDULE 2

F13**[**...**]**

Annotations

Amendments:

F13 Repealed (31.10.2012) by *Ombudsman (Amendment) Act 2012* (38/2012), s. 22(e), commenced as per s. 1(3).

Number 22 *of* 2002

OMBUDSMAN FOR CHILDREN ACT 2002

REVISED

Updated to 26 December 2018

About this Revised Act

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 Act.

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 1977, 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

- *Freedom of Information Act 2014* (30/2014)
- *Child and Family Agency Act 2013* (40/2013)
- *Ombudsman (Amendment) Act 2012* (38/2012)
- *Ministers and Secretaries (Amendment) Act 2011* (10/2011)
- *Adoption Act 2010* (21/2010)
- *Consumer Protection Act 2007* (19/2007)
- *Registration of Deeds and Title Act 2006* (12/2006)

- *Health Act 2004* (42/2004)
- *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004)
- *Social Welfare (Miscellaneous Provisions) Act 2003* (4/2003)
- *Pensions Act 1990* (25/1990)

All Acts up to and including *Public Service Superannuation (Age of Retirement) Act 2018* (39/2018), enacted 26 December 2018, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2014* (S.I. No. 268 of 2014)
- *Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2013* (S.I. No. 135 of 2013)
- *Ombudsman for Children Act 2002 (Section 11(2)(a)) Order 2012* (S.I. No. 210 of 2012)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Office of the Minister for Children and Youth Affairs (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 218 of 2011)
- *Occupational Pension Schemes (Preservation of Benefits)(Amendment) Regulations 2009* (S.I. No. 70 of 2009)
- *Occupational Pension Schemes (Funding Standard)(Amendment) Regulations 2008* (S.I. No. 295 of 2008)
- *Ombudsman for Children Act 2002 (Commencement) Order 2004* (S.I. No. 925 of 2004)
- *Ombudsman for Children (Section 4) (Commencement) Order 2003* (S.I. No. 712 of 2003)
- *Occupational Pension Schemes (Preservation of Benefits) Regulations 2002* (S.I. No. 279 of 2002)
- *Occupational Pension Schemes (Funding Standard) Regulations 1993* (S.I. No. 419 of 1993)

All statutory instruments up to and including *European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018* (S.I. No. 656 of 2018), made 20 December 2018, were considered in the preparation of this revision.