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*Number 22 of 2017*

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**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN ACT 2017**

**REVISED**

**Updated to 30 September 2024**

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This Revised Act is an administrative consolidation of the *Financial Services and Pensions Ombudsman Act 2017*. 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 the *Criminal Justice (Amendment) Act 2024* (31/2024), enacted 4 October 2024, and all statutory instruments up to and including the *Automatic Enrolment Retirement Savings System Act 2024 (Commencement) Order 2024* (S.I. No. 500 of 2024), made 30 September 2024, were considered in the preparation of this Revised Act.

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**FINANCIAL SERVICES AND PENSIONS OMBUDSMAN ACT 2017**

**REVISED**

**Updated to 30 September 2024**

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An Act to provide for the establishment of the Office of the Financial Services and Pensions Ombudsman and to confer functions on it; to provide for the appointment of persons to be the Ombudsman and Deputy Ombudsman; to provide for a complaints procedure; to provide for appeals in relation to decisions of the Ombudsman; to provide for the dissolution of the Financial Services Ombudsman Council, the Financial Services Ombudsman's Bureau and the office of the Pensions Ombudsman; to provide for the establishment of the Financial Services and Pensions Ombudsman Council; to repeal certain provisions of the [Central Bank Act 1942](#) and the [Pensions Act 1990](#) and to amend the [Freedom of Information Act 2014](#); and to provide for related matters.

[26th July, 2017]

**Be it enacted by the Oireachtas as follows:**

**Annotations**

**Editorial Notes:**

- E1** Act designated as national measure for certain purposes (17.01.2020) by *European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2020* (S.I. No. 214 of 2020), reg. 4 and sch. ref. nos. 23, 24, in effect as per reg. 1(2).
- E2** Previous affecting provision: Act designated as national measure for certain purposes (17.01.2020) by *European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2019* (S.I. No. 691 of 2019), reg. 4 and sch. ref. nos. 23, 24; revoked (17.01.2020) by *European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2020* (S.I. No. 214 of 2020), reg. 11(f), in effect as per reg. 1(2).

**PART 1**

**PRELIMINARY AND GENERAL**

**Short title and commencement**

- 1.** (1) This Act may be cited as the Financial Services and Pensions Ombudsman Act 2017.

- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint 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:

**E3** Power pursuant to subs. (2) exercised (1.01.2018) by *Financial Services and Pensions Ombudsman Act 2017 (Commencement) Order 2017* (S.I. No. 524 of 2018).

2. The 1st day of January 2018 is appointed as the day on which the Financial Services and Pensions Ombudsman Act 2017 (No. 22 of 2017) shall come into operation.

#### Interpretation

#### 2. (1) In this Act—

“Act of 1942” means the [Central Bank Act 1942](#);

“Act of 1990” means the [Pensions Act 1990](#);

“Act of 1995” means the [Consumer Credit Act 1995](#);

“Act of 2004” means the [Public Service Management \(Recruitment and Appointments\) Act 2004](#);

“Act of 2014” means the [Companies Act 2014](#);

“actual or potential beneficiary”—

(a) in relation to a complaint concerning a pension provider, means a member, an external member, any person who has been a member, any surviving dependant of a deceased member, any person claiming to be a member or a surviving dependant of a deceased member, a contributor to a PRSA, a legal personal representative of a deceased member or deceased contributor, a widow, widower or surviving spouse or civil partner of a deceased member or deceased contributor or any person with an entitlement under a scheme, and

(b) in relation to a complaint concerning a financial service provider, means a consumer, any surviving dependant of a consumer, a legal personal representative of a deceased consumer, a widow, widower or surviving spouse or civil partner of a deceased consumer or any person who is contractually entitled to benefit from a long-term financial service;

**F1** [“automatic enrolment retirement savings system” means the retirement savings system established under the [Automatic Enrolment Retirement Savings System Act 2024](#);]

“Bank” means the Central Bank of Ireland;

“complaint” means a complaint made in accordance with this Act in relation to the conduct of a financial service provider or a pension provider specified in [section 44\(1\)\(a\)](#) and [\(b\)](#) respectively;

“complainant” means a person who makes a complaint under [section 44\(1\)](#) that is—

(a) a consumer,

(b) an actual or potential beneficiary,



- (c) a person acting on behalf of an actual or potential beneficiary, or
- (d) a person of a class specified in regulations made by the Minister under [section 4](#);

“consumer”, in relation to a financial service, means—

- (a) (i) a natural person, not acting in the course of business,
- (ii) a sole trader, partnership, trust club or charity (not being a body corporate), with an annual turnover in its previous financial year (within the meaning of section 288 of the Act of 2014) of €3 million or less, or
- (iii) an incorporated body that—
  - (I) had an annual turnover in its previous financial year (within the meaning of section 288 of the Act of 2014) of €3 million or less, and
  - (II) is not a body corporate that is a member of a group of companies (within the meaning of section 8 of the Act of 2014) with a combined annual turnover (in the previous financial year (within the meaning of section 288 of the Act of 2014) of the group of companies), of greater than €3 million,

that—

- (A) is a customer of a financial service provider,
- (B) is a person or body to whom a financial service provider has offered to provide a financial service, or
- (C) has sought the provision of a financial service,

F2[(b) a consumer who was, in relation to a credit agreement, a consumer-hire agreement or a hire-purchase agreement, a customer of the financial service provider in a case where a credit servicing firm undertakes credit servicing in respect of the agreement concerned,]

- (c) an actual or potential beneficiary of a financial service, or
- (d) an employee or a former employee entitled to benefit from an income continuance plan;

“consumer”, in relation to a pension product, means an actual or potential beneficiary of an occupational pensions scheme, a trust RAC or a PRSA who believes they have suffered financial loss because of maladministration of the scheme, trust or PRSA, as the case may be;

F3[“consumer-hire agreement” has the meaning given to it in section 28 of the Central Bank Act 1997;]

“Council” has the meaning given to it by [section 37](#);

“credit agreement” has the meaning given to it in [section 28](#) of the [Central Bank Act 1997](#);

“credit servicing” has the meaning given to it in [section 28](#) of the [Central Bank Act 1997](#);

“credit servicing firm” has the meaning given to it in [section 28](#) of the [Central Bank Act 1997](#);

“custodian” means a financial institution appointed to hold securities or other assets of a scheme, whether in physical or electronic form;

“Deputy Financial Services Ombudsman” means a person appointed by the Financial Services Ombudsman Council under section 57BJ(1) of the Act of 1942;

“Deputy Ombudsman” has the meaning given to it by [section 8\(1\)\(b\)](#);

“dissolved bodies” means—

- (a) the Financial Services Ombudsman’s Bureau,
- (b) the Financial Services Ombudsman Council, and
- (c) the office of the Pensions Ombudsman;

“establishment day” shall be construed in accordance with [section 6](#);

“external member”, in relation to a scheme, means any person who, having been admitted to membership under the rules of the scheme, remains entitled to any benefit under the scheme in respect of a period of service whilst employed outside the State;

“financial services” includes financial products;

“Financial Services Ombudsman” means a person appointed by the Financial Services Ombudsman Council under section 57BJ(1) of the Act of 1942;

“Financial Services Ombudsman’s Bureau” means the bureau established by section 57BI of the Act of 1942;

“Financial Services Ombudsman Council” means the council established by section 57BC of the Act of 1942;

“financial service provider” means any of the following:

- (a) a regulated financial service provider within the meaning of section 2(1) of the Act of 1942;
- (b) a credit intermediary that is required to be authorised by the Competition and Consumer Protection Commission under Part XI of the Act of 1995;
- (c) a pawnbroker that is required to be authorised by the Competition and Consumer Protection Commission under [section 8](#) of the [Pawnbrokers Act 1964](#);
- (d) a creditor with respect to the performance of his or her obligations under the Act of 1995 and under—
  - (i) a contract for the provision of credit to a consumer, and
  - (ii) any contract of guarantee relating to the provision of that credit;
- (e) an owner of goods that are subject to hire-purchase under a hire-purchase agreement with respect to the performance of his or her obligations under the Act of 1995 and under—
  - (i) a contract for the hire-purchase, and
  - (ii) any contract of guarantee relating to the hire-purchase agreement or any right to recover the goods from the hirer under the hire-purchase agreement;

(f) an owner of goods that are subject to a consumer-hire agreement with respect to the performance of his or her obligations under the Act of 1995 and under—

(i) a consumer-hire agreement, and

(ii) under any contract of guarantee relating to the consumer-hire agreement or any right to recover the goods from the hirer under the consumer-hire agreement;

(g) a mortgage lender within the meaning of section 2 of the Act of 1995;

(h) any other person of a class specified in regulations made by the Minister under [section 4](#);

“financial services industry levy” has the meaning given to it by [section 43](#);

F3[“hire-purchase agreement” has the meaning given to it in section 28 of the Central Bank Act 1997;]

“income continuance plan” means an insurance contract taken out by an employer (whether or not in conjunction with employees) designed to pay an income to an employee on the occurrence of certain events specified in the contract that render the employee unable to continue to perform the duties under his or her contract of employment on a long-term basis;

“investment manager” means any person appointed to manage the funds of a scheme or to implement the statement of investment policies and principles of the trustees;

F4[“long-term financial service” means—

(a) subject to [paragraph \(b\)](#) and [subsection \(3\)](#), a financial service the duration of which is a fixed term of 5 years and one month, or more, but, notwithstanding that the aggregate term of them may be 5 years and one month (or more), there does not fall within this paragraph a series of consecutive terms in respect of a financial service’s duration (provided no individual one of them is 5 years and one month, or more, in length), or

(b) a financial service that is—

(i) life assurance to which, by virtue of Regulation 4 of those Regulations, the European Communities (Life Assurance) Framework Regulations 1994 ([S.I. No. 360 of 1994](#)) apply (not being life assurance falling within Class VII defined in the first Annex thereto), or

(ii) life assurance to which the European Union (Insurance and Reinsurance) Regulations 2015 ([S.I. No. 485 of 2015](#)) apply (not being life assurance falling within paragraph 7, 8 or 9 of Schedule 2 thereto),

regardless, in either case, of whether the term of such life assurance is fixed at a specified calendar period or not;]

“member” means—

(a) in relation to a scheme, subject to sections 62 and 154 of the Act of 1990, any person who, having been admitted to membership under the rules of the scheme, F1[other than the automatic enrolment retirement savings system,] remains entitled to any benefit under the scheme in respect of a period of service whilst employed within the F5[State,]

F1[(aa) in relation to the automatic enrolment retirement savings system, a participant within the meaning of [section 2](#) of the Automatic Enrolment Retirement Savings System Act 2024, and]

(b) in relation to a trust RAC, any person whose occupational activities entitle, or will entitle, the person to retirement benefits (within the meaning of Article 6 of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003<sup>1</sup>) in accordance with the rules of the trust RAC;

“Minister” means the Minister for Finance;

“occupational pension scheme” means any scheme or arrangement other than an overseas pension scheme within the meaning of [section 770\(1\)](#) of the [Taxes Consolidation Act 1997](#)—

(a) which is comprised in one or more instruments or agreements,

(b) subject to section 154 of the Act of 1990, which provides or is capable of providing in relation to employees in any description of employment within the State, benefits, and

(c) which—

(i) has been approved of by the Revenue Commissioners for the purpose of Chapter 1 of Part 30 of the [Taxes Consolidation Act 1997](#),

(ii) is a scheme or arrangement in respect of which an application for approval under Chapter 1 of Part 30 of the [Taxes Consolidation Act 1997](#) is being considered,

(iii) is a statutory scheme to which [section 776](#) of the [Taxes Consolidation Act 1997](#) applies,

(iv) is a scheme to which section 790B of the [Taxes Consolidation Act 1997](#) applies,

(v) is a scheme, other than a scheme specified in subparagraph (i), (ii) or (iii), the benefits of which are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas, or

(vi) has been approved by the Revenue Commissioners for the purpose of one or more of the following:

(I) [section 32](#) of the [Finance Act 1921](#);

(II) [section 34](#) of the [Finance Act 1958](#); or

(III) [section 222](#) or [229](#) of the [Income Tax Act 1967](#);

“Office” has the meaning given to it by [section 7\(1\)](#);

“Ombudsman” has the meaning given to it by [section 8\(1\)\(a\)](#);

“paying agent” means a person appointed by the trustees of a scheme to administer the payment of benefits under that scheme to beneficiaries and to collect and account for any tax liability arising from such benefits;

F5[“pension provider” means—

(a) in relation to a scheme, other than the automatic enrolment retirement savings system, any of the following:

(i) any employer who adheres to the scheme;

(ii) any person or undertaking that provides services to the scheme as a trustee, administrator, registered administrator for the purposes

<sup>1</sup> OJ No. L 253, 23.09.2003, p. 10

of Part VIA of the Act of 1990, consultant or advisor, investment manager, custodian, paying agent, insurer or actuary;

(iii) any person to whom the implementation or interpretation of the rules of the scheme is entrusted;

(iv) any other person of a class specified in regulations made by the Minister under [section 4](#),

and

(b) in relation to the automatic enrolment retirement savings system, An tÚdarás Náisiúnta um Uathrollú Coigiltis Scoir;]

“Pensions Ombudsman” shall be construed in accordance with section 127 of the Act of 1990;

“PRSA” means a personal retirement savings account established by a contributor with a PRSA provider under the terms of a PRSA contract;

“scheme”, in relation to a pension, means an occupational pension scheme, a PRSA F5[, a trust RAC or the automatic enrolment retirement savings system];

“trust RAC” means a trust scheme within the meaning of [section 784\(4\)](#) of the [Taxes Consolidation Act 1997](#) which has been approved by the Revenue Commissioners for the purposes of section 784(4) or 785(5) of that Act or the application for approval of which under either of those provisions is being considered, other than a trust scheme which, apart from temporary holdings in cash for liquidity purposes, invests only in life assurance policies.

(2) A word or expression that is used in this Act and is also used in the Act of 1942 or the Act of 1990 shall have, unless the context otherwise requires, the same meaning in this Act as it has in either of those Acts.

F6[(3) Notwithstanding the fact that the financial service does not fix its duration to be of a term such as is referred to in *paragraph (a)* of the definition of “long-term financial service” in *subsection (1)*, a financial service shall be regarded as falling within that definition if it would be reasonable for a consumer to expect its duration to be of at least the length referred to in that paragraph and that reasonable expectation arises by reason of—

(a) the manner in which the financial service operates to provide a financial benefit to the consumer,

(b) the type of assets with which its operation is connected, or

(c) representations made by the financial service provider,

as distinct from where such an expectation arises in the case of—

(i) a current account with a financial institution, or

(ii) any other financial service of an indefinite duration that is widely available and does not possess specialised characteristics.]

#### Annotations

##### Amendments:

- F1** Inserted (30.09.2024) by *Automatic Enrolment Retirement Savings System Act 2024* (20/2024), s. 119(a)(i), (ii)(I)(A), (II), S.I. No. 500 of 2024, in effect as per art. 3(d).

<b>F2</b>	Substituted (16.05.2022) by <i>Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022</i> (5/2022), s. 18(a), S.I. No. 229 of 2022.
<b>F3</b>	Inserted (16.05.2022) by <i>Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022</i> (5/2022), s. 18(b), S.I. No. 229 of 2022.
<b>F4</b>	Substituted (29.10.2018) by <i>Markets in Financial Instruments Act 2018</i> (25/2010), s. 9(1), commenced on enactment.
<b>F5</b>	Substituted (30.09.2024) by <i>Automatic Enrolment Retirement Savings System Act 2024</i> (20/2024), s. 119(a)(ii)(I)(B), (liii), (iv), S.I. No. 500 of 2024, in effect as per art. 3(d).
<b>F6</b>	Inserted (29.10.2018) by <i>Markets in Financial Instruments Act 2018</i> (25/2010), s. 9(2), commenced on enactment.

### Expenses

- 3.** (1) The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.
- (2) The expenses incurred by the Ombudsman in the performance of his or her functions under this Act—
- (a) in so far as they relate to the investigation of complaints regarding financial service providers shall be paid out of moneys provided by the financial services industry levy, and
- (b) in so far as they relate to the investigation of complaints regarding pension providers shall, to such extent as may be sanctioned by the Minister, be paid out of moneys provided by the Oireachtas.
- (3) The calculation of expenses to be charged to the levy, under *subsection (2)(a)*, and to the Oireachtas, under *subsection (2)(b)*, shall be based on the percentage division of the workload of the office of the Ombudsman between—
- (a) complaints relating to financial service providers, and
- (b) complaints relating to pension providers,
- dealt with by the Ombudsman in the previous financial year.
- (4) If any issue arises as to whether any expenses fall within *paragraph (a)* or *(b)* of *subsection (2)*, it shall be referred to the Minister whose decision on the matter shall be final.

### Regulations

- 4.** (1) The Minister may, whether on his or her own initiative or at the request of the Ombudsman, having consulted with the Council and the Ombudsman, for the purposes of providing ease of access for complainants to the Ombudsman, increasing efficiency in the operation of the office of the Ombudsman and allowing for appropriate redress and compensation to be provided by the Ombudsman to complainants, by regulations provide for any matter—
- (a) referred to in this Act as prescribed or to be prescribed, or
- (b) for the purposes of enabling any provision of this Act to have full effect.

- (2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may—
- (a) prescribe a class or classes of persons who may make a complaint under *section 44*,
  - (b) prescribe the qualification requirements of a class under this subsection,
  - (c) specify a class or classes of persons for the purposes of—
    - (i) *paragraph (a)* of the definition of “financial service provider”, or
    - (ii) F7[*subparagraph (a)(iv)*] of the definition of “pension provider”,
  - (d) prescribe matters to be taken into account by the Ombudsman in the investigation or adjudication of a complaint,
  - (e) prescribe procedures to be followed by the Ombudsman in processing a complaint,
  - (f) specify circumstances in which the Ombudsman may dismiss a complaint,
  - (g) prescribe a class or classes of complaint that may not be made to the Ombudsman under *section 44*,
  - (h) specify a maximum amount of compensation that the Ombudsman may award to a complainant under *section 60*,
  - (i) prescribe the matters to be taken into account for the purpose of calculating turnover limits for complainants.
- (3) Without prejudice to any provision of this Act, regulations under this section—
- (a) may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations, and
  - (b) may make different provision for different circumstances or cases, classes or types.
- (4) 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 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

**Annotations****Amendments:**

- F7** Substituted (30.09.2024) by *Automatic Enrolment Retirement Savings System Act 2024* (20/2024), s. 119(b), S.I. No. 500 of 2024, in effect as per art. 3(d).

**Editorial Notes:**

- E4** Power pursuant to section exercised (8.05.2018) by *Financial Services and Pensions Ombudsman (Compensation) Regulations 2018* (S.I. No. 154 of 2018).

**Repeals and revocations**

5. (1) The Acts of the Oireachtas specified in *Part 1* of *Schedule 1* are repealed to the extent specified in column (4) of that Part.
- (2) The statutory instruments specified in *Part 2* of *Schedule 1* are revoked to the extent specified in column (4) of that Part.

**PART 2****ESTABLISHMENT OF OFFICE OF OMBUDSMAN AND DEPUTY OMBUDSMAN****Establishment day**

6. The Minister shall, by order, appoint a day as the establishment day for the purposes of this Act.

**Annotations****Editorial Notes:**

- E5** Power pursuant to section exercised (1.01.2018) by *Financial Services and Pensions Ombudsman Act 2017 (Establishment Day) Order 2017* (S.I. No. 525 of 2017).

**Establishment of Office of Financial Services and Pensions Ombudsman**

7. (1) There shall stand established on the establishment day a body, which shall be known as Oifig an Ombudsman um Sheirbhísí Airgeadais agus Pinsin or, in the English language, as the Office of the Financial Services and Pensions Ombudsman (in this Act referred to as the “Office”), to perform the functions conferred on it by this Act.
- (2) The Office shall consist of—
- (a) the Financial Services and Pensions Ombudsman,
  - (b) any Deputy Financial Services and Pensions Ombudsman, and
  - (c) the staff members appointed under *section 15*.

**Appointment of Ombudsman and Deputy Ombudsman**

8. (1) The Minister, having consulted the Minister for Social Protection, from among persons in respect of whom a recommendation for the purposes of this section has been made by the Public Appointments Service consequent upon the holding of a competition in accordance with the Act of 2004 in respect of each of those offices, shall appoint the following:
- (a) a person to hold office known as an tOmbudsman Seirbhísí Airgeadais agus Pinsean or, in the English language, the Financial Services and Pensions Ombudsman (in this Act referred to as the “Ombudsman”);
  - (b) a person to hold office known as an Leas-Ombudsman Seirbhísí Airgeadais agus Pinsean or, in the English language, the Deputy Financial Services and Pensions Ombudsman (in this Act referred to as a “Deputy Ombudsman”).



- (2) The Public Appointments Service shall not make, in relation to a competition referred to in *subsection (1)*, a recommendation for the purposes of that subsection in respect of more than 3 persons in respect of any vacancy.
- (3) A person who, immediately before the commencement of this section, was a Financial Services Ombudsman shall, from such commencement, be deemed to have been appointed to that office under this section subject to the same terms and conditions as applied to his or her appointment immediately before such commencement.
- (4) A person who, immediately before the establishment day, was a Deputy Financial Services Ombudsman shall, on the establishment day, become a Deputy Ombudsman, under this section subject to the same terms and conditions as applied to his or her appointment immediately before such day.
- (5) Subject to *subsection (4)*, the Ombudsman and Deputy Ombudsman shall each hold office for such period not exceeding 5 years from the date of his or her appointment as the Minister may determine.
- (6) The Minister may reappoint a person whose term of office as Ombudsman or Deputy Ombudsman expires by the efflux of time to be the Ombudsman or Deputy Ombudsman, as the case may be.
- (7) The Ombudsman and Deputy Ombudsman shall hold office subject to such terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.
- (8) The Ombudsman and Deputy Ombudsman shall not hold any other office or employment or carry on any business without the consent of the Minister.

#### **Membership of either House of Oireachtas or European Parliament**

##### **9. (1) Where the Ombudsman or Deputy Ombudsman is—**

- (a) nominated to be a member of Seanad Éireann,
  - (b) elected to be a member of either House of the Oireachtas or to be a member of the European Parliament, or
  - (c) regarded under Part XIII of the Second Schedule to the **European Parliament Elections Act 1997** as having been elected to that Parliament,
- he or she shall thereupon cease to be Ombudsman or Deputy Ombudsman, as the case may be.

##### **(2) Where a member of the staff of the Office is—**

- (a) nominated to be a member of Seanad Éireann,
  - (b) elected to be a member of either House of the Oireachtas or to be a member of the European Parliament, or
  - (c) regarded under Part XIII of the Second Schedule to the **European Parliament Elections Act 1997** as having been elected to that Parliament,
- he or she shall thereupon stand seconded from employment by the Office and shall not be paid by, or entitled to receive from, the Office any remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been so elected (as the case may be), and ending when such person

ceases to be a member of such House or such Parliament, as the case may be.

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

#### **Acting Ombudsman**

- 10.** (1) Where there are 2 or more Deputy Ombudsmen, one of those shall be appointed by the Minister to act as Ombudsman—

- (a) during the absence of the Ombudsman,
- (b) where the Ombudsman stands suspended from his or her office,
- (c) while the Ombudsman is unable to perform his or her duties for any reason, or
- (d) during a vacancy in the office of the Ombudsman.

- (2) A person shall not be appointed to perform the functions of the Ombudsman for a continuous period of more than 12 months during a vacancy in the office of Ombudsman.

- (3) No one is entitled to question the appointment under this section of a Deputy Ombudsman to act as Ombudsman.

- (4) A Deputy Ombudsman is, when acting as the Ombudsman, taken to be that Ombudsman.

#### **Removal or resignation of Ombudsman and Deputy Ombudsman**

- 11.** (1) The Minister may at any time remove the Ombudsman or Deputy Ombudsman from office where, in the Minister's opinion, the Ombudsman or Deputy Ombudsman, as the case may be, has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance of the functions of the office.

- (2) Where the Ombudsman or Deputy Ombudsman is removed from office under this section, the Minister shall cause to be laid before each House of the Oireachtas a statement of the reasons for the removal.

- (3) The Ombudsman or Deputy Ombudsman may at any time resign his or her office by letter addressed to the Minister.

- (4) A resignation under *subsection (3)* shall be effective on the later of—

- (a) the date (if any) specified in the letter, or
- (b) such other date as may be agreed with the Minister.

#### **Functions of Ombudsman**

- 12.** (1) The principal function of the Ombudsman shall be to investigate complaints in an appropriate manner proportionate to the nature of the complaint by—

- (a) informal means,

- (b) mediation,
  - (c) formal investigation (including oral hearings if required), or
  - (d) a combination of the means referred to in *paragraphs (a) to (c)*.
- (2) The Ombudsman shall have such powers as are necessary or expedient for the performance of the functions conferred by this Act.
- (3) The Ombudsman shall endeavour to—
- (a) be accessible to the public and ensure that complaints about the conduct of financial service providers or pension providers are dealt with in an informal manner efficiently, effectively and fairly,
  - (b) improve public understanding of the role and functions of the Ombudsman,
  - (c) improve public understanding of issues related to complaints considered by the Ombudsman by publishing—
    - (i) decisions, and
    - (ii) guidance notes on procedures and processes,
- and
- (d) engage with financial service providers and pension providers to promote active engagement and consumer education in respect of their internal dispute resolution practices.
- (4) The Ombudsman shall establish and maintain efficient and effective systems and procedures for the investigation and adjudication of complaints in a timely and effective manner.
- (5) As soon as practicable after the establishment day, the Ombudsman shall adopt and publish, in a manner easily accessible to the public, information in relation to—
- (a) the making of complaints by complainants, and
  - (b) the handling of complaints by each of the means referred to in *subsection (1)(a) to (c)*.
- (6) Without prejudice to the generality of *subsection (1)*, in performing his or her functions under this Act, the Ombudsman may prepare and publish guidelines related to his or her functions under *sections 12(1) and 56(1)*.
- (7) The Ombudsman may, and shall when requested by the Minister—
- (a) advise and, as appropriate, make recommendations to the Government, the Minister, any other Minister of the Government or any Minister of State, in relation to any proposals for legislative change, or any other policy matters, concerning financial services or pensions and relating to the functions of the Ombudsman, and
  - (b) submit to the Minister, any other Minister of the Government or any Minister of State, after consultation with such persons as he or she considers appropriate having regard to the proposals to be submitted, any proposals he or she considers appropriate for amendment of any enactment, or for new enactments, concerning financial services or pensions and relating to the functions of the Ombudsman.

- (8) Subject to this Act, the Ombudsman shall be independent in the performance of his or her functions.
- (9) The Ombudsman may authorise and direct any Deputy Ombudsman or any member of the Ombudsman's staff to perform any of the functions (including the giving of directions under *section 60(4)* or *61(2)*) conferred on the Ombudsman by this Act.
- (10) The Ombudsman may revoke any authorisation or direction given under *subsection (9)*.
- (11) Subject to this Act, the Ombudsman, when dealing with a particular complaint, shall act in an informal manner and according to equity, good conscience and the substantial merits of the complaint without undue regard to technicality or legal form.

### **Functions of Deputy Ombudsman**

- 13.** (1) Within the scope of the authority conferred on the Ombudsman under *section 12(1)*, the Deputy Ombudsman may perform any of the functions conferred on the Ombudsman by this Act or any other enactment.
- (2) Any act done or omitted to be done by the Deputy Ombudsman in accordance with *subsection (1)* is deemed to have been done or omitted to have been done by the Ombudsman.
  - (3) The Deputy Ombudsman shall, subject to this Act, be independent in the performance of the functions under *subsection (1)*, except that he or she shall—
    - (a) comply with directions given by the Ombudsman under *section 12(9)*, and
    - (b) regularly keep the Ombudsman informed about the performance of his or her functions generally.

### **Salary and superannuation**

- 14.** (1) In this section, “superannuation benefit” means any pension, gratuity or other allowance payable to or in respect of a person ceasing to be Ombudsman, Deputy Ombudsman or a member of the staff of the Office.
- (2) The Ombudsman and the Deputy Ombudsman shall be paid such remuneration and allowances (including travel and subsistence allowances) as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines.
  - (3) The Minister may, with the consent of the Minister for Public Expenditure and Reform, make and carry out such scheme or schemes for the granting of superannuation benefits to or in respect of any person (including the Ombudsman and Deputy Ombudsman) who, on becoming a member of the staff of the Ombudsman, does not become a member of the Single Public Service Pension Scheme.
  - (4) A scheme under this section shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme or schemes and different times and conditions may be fixed in respect of different classes of persons.
  - (5) The Minister may at any time, with the consent of the Minister for Public Expenditure and Reform, make and carry out a scheme or schemes amending or revoking a scheme under this section.

- (6) A scheme under this section shall include a provision for appeals from a decision relating to a superannuation benefit under the scheme.
- (7) 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 under the scheme.
- (8) If any dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable 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 Public Expenditure and Reform, whose decision shall be final.
- (9) A person who immediately before the establishment day was a member of a superannuation scheme established under—
- (a) the Financial Services Ombudsman Bureau Ombudsman and Deputy Ombudsman Superannuation Scheme 2016 (S.I. No. 209 of 2016), or
  - (b) the Financial Services Ombudsman Bureau Staff Superannuation Scheme 2016 (S.I. No. 210 of 2016),
- shall, on and after the establishment day, be entitled to continue to be a member of the scheme in accordance with such of its terms as are in force from time to time.

#### Staff of Ombudsman

15. (1) Subject to *subsection (4)*, the Ombudsman may appoint persons to be the staff of his or her office and may determine their duties.
- (2) Appointments under *subsection (1)* shall be subject to—
- (a) the Act of 2004, and
  - (b) the Civil Service Regulation Acts 1956 to 2005.
- (3) Persons may be appointed under *subsection (1)*—
- (a) as consultants or advisors in accordance with *section 16*,
  - (b) on a contract for services,
  - (c) on a permanent basis, or
  - (d) on a temporary or part-time basis.
- (4) The Ombudsman, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, shall determine—
- (a) the terms and conditions of employment (including terms and conditions relating to remuneration and allowances) of staff appointed under this section, and
  - (b) the grades of the staff of his or her office and the numbers of staff at each grade.
- (5) The Ombudsman shall have regard to the Government's policy on remuneration of public sector employees, the overall sanctioned numbers and policy and any directions that the Minister for Public Expenditure and

Reform may give from time to time for the purpose of giving effect to those policies.

- (6) The members of staff of the Ombudsman shall perform their functions under the direction and control of the Ombudsman.
- (7) The Ombudsman may authorise a person appointed under *subsection (1)* to perform any of the functions conferred on the Ombudsman by this Act.
- (8) The Ombudsman may revoke an authorisation made under *subsection (7)*.
- (9) Where a person is authorised to perform functions under *subsection (7)*, references in this Act to the Ombudsman, in so far as the references relate to the functions the subject of the authorisation, are to be read as references to the authorised person.
- (10) An act or thing done by a person within the scope of the authority given by the Ombudsman has the same force and effect as if done by the Ombudsman.
- (11) A member of the staff of the Ombudsman may perform functions authorised under *subsection (7)* free from interference from any other person, except that the staff member shall—
  - (a) comply with directions given by the Ombudsman or the Deputy Ombudsman under *section 12(9)* or *subsection (6)*, and
  - (b) keep the Ombudsman or the Deputy Ombudsman informed about the performance of his or her functions generally.

#### **Consultants and advisers**

- 16. (1) The Ombudsman may, with the approval of the Minister and with the consent of the Minister for Public Expenditure and Reform, from time to time engage such consultants or advisers as he or she considers necessary for the performance of his or her functions.
- (2) Any fees due to a consultant or adviser engaged under this section shall, having regard to guidelines issued from time to time by the Minister or the Minister for Public Expenditure and Reform, be paid out of funds at the Ombudsman's disposal.
- (3) The Ombudsman, subject to compliance with any Government guidelines on public procurement, the European Union (Award of Public Authority Contracts) Regulations 2016 (*S.I. No. 284 of 2016*) and the Code of Conduct for State Bodies, may supplement the staff of the Office by entering into contracts for services to assist the Ombudsman as required.

#### **Confidential information**

- 17. (1) In this section, "confidential information" includes information that is expressed by the Ombudsman to be confidential either as regards particular information or information of a particular class or description.
- (2) A person shall not, unless authorised by the Ombudsman or required by law, disclose any confidential information obtained by him or her while performing, or as a result of having performed, duties as any of the following:
  - (a) the Deputy Ombudsman;
  - (b) a member of the Council;

- (c) a member of the staff of the Ombudsman;
  - (d) a consultant or adviser to the Ombudsman appointed under *section 16*.
- (3) *Subsection (2)* shall not operate to prevent the disclosure of information—
- (a) in a report to the Ombudsman, or
  - (b) by or on behalf of the Ombudsman to a Minister of the Government.
- (4) A person who contravenes *subsection (2)* commits an offence and shall be liable on summary conviction to a class A fine.
- (5) Notwithstanding *subsection (2)*—
- (a) the Ombudsman,
  - (b) the Deputy Ombudsman,
  - (c) a member of the Council,
  - (d) a member of the staff of the Office, or
  - (e) a consultant or advisor to the Ombudsman appointed under *section 16*, may disclose to a member of the Garda Síochána information which, in the opinion of the person concerned, may relate to the commission of an offence (whether an offence under this Act or not).

#### **Exchange of information and co-operation**

- 18.** (1) In this section, “regulatory authorities” means the Bank, the Competition and Consumer Protection Commission and the Pensions Authority.
- (2) The Council and the Ombudsman shall co-operate with the regulatory authorities with a view to ensuring that this Act operates in a way that contributes to promoting the best interests of consumers and actual or potential beneficiaries of financial or pension services and to the efficient and effective handling of complaints.
- (3) Notwithstanding anything contained in any enactment, for the purposes of the performance of the functions of the Ombudsman under this Act, information held by the Ombudsman may be transferred by the Ombudsman to the regulatory authorities.
- (4) The Ombudsman may, or shall whenever requested in writing to do so by a regulatory authority provide that regulatory authority with records or copies of records, or information, dealing with specified matters, or matters of a specified kind, relevant to the performance of the functions of the regulatory authority.
- (5) The Council or the Ombudsman may make recommendations to the regulatory authorities in relation to measures that those bodies might take in order to—
- (a) effectively deal with persistent patterns of complaints made against—
    - (i) specified financial service providers,
    - (ii) a specified class of financial service providers,
    - (iii) specified pension providers, or
    - (iv) a specified class of pension providers,

- (b) improve the way in which financial service providers or pension providers deal with complaints that are made against them, or
  - (c) effectively deal with any other matter relating to promoting the interests of consumers and actual or potential beneficiaries of financial services or pensions.
- (6) A person who discloses information under or for the purposes of this section does not incur liability for defamation or other civil liability only because of the disclosure.
- (7) Nothing in this section affects an obligation or power to provide information in any other enactment.
- (8) Without prejudice to section 33AK of the Act of 1942, at the request of the Ombudsman, the Bank may validate any information provided to it by the Ombudsman under this section that is used to calculate the financial services industry levy in so far as such data to validate that information is available to the Bank.
- (9) The Ombudsman and a regulatory authority may enter into a memorandum of understanding setting out the terms under which they agree to give effect to any of the matters mentioned in *subsections (2), (4) and (5)(a) to (c)*.

#### **Annual estimate of income and expenditure**

19. (1) The Ombudsman shall, not later than 3 months before the beginning of each financial year, or within such extended period as the Council may allow—
- (a) arrange for the preparation of a statement setting out estimates of the income and expenditure of the office of the Ombudsman for that year, and
  - (b) submit the statement to the Council for approval.
- (2) The statement referred to in *subsection (1)* shall—
- (a) specify the amounts expected to be collected and recovered during the financial year concerned from the imposition of the financial services industry levy,
  - (b) specify the amount of proposed funding by the Oireachtas to be agreed by the Minister,
  - (c) set out the proposed financial services industry levy for that year,
  - (d) set out the expected expenses to be paid out of moneys provided by the Oireachtas for that year, and
  - (e) specify any other sources from which funds are expected to be obtained during that year to finance the carrying out of the functions of the Ombudsman and the amounts expected to be raised from those sources.
- (3) Before submitting the statement referred to in *subsection (1)* to the Council for approval, the Ombudsman shall provide the Council with particulars of the estimates referred to in *subsection (2)* and, as soon as practicable after being provided with those particulars, the Council shall give the Ombudsman its views on those estimates.



**Accounts and audit**

- 20.** (1) The Ombudsman shall, in respect of each financial year, keep in such form as may be approved by the Minister all proper and usual accounts of all moneys received or expended by the Ombudsman in performing functions under this Act, including an income and expenditure account and balance sheet and, in particular, shall keep all such special accounts as the Minister may from time to time direct.
- (2) Not later than 4 months after the end of the financial year to which the accounts relate, the Ombudsman shall submit the accounts kept under this section to the Comptroller and Auditor General for audit.
- (3) Immediately following the audit referred to in *subsection (2)*, the Ombudsman shall present to the Minister—
- (a) copies of the audited accounts, including the income and expenditure account, the balance sheet and such other accounts (if any) kept under this section as the Minister may direct, and
  - (b) the Comptroller and Auditor General's report on the audited accounts.
- (4) As soon as practicable after receipt of the audited accounts and the Comptroller and Auditor General's report, the Minister shall cause copies of them to be laid before each House of the Oireachtas.

**Accounting records**

- 21.** (1) The Ombudsman shall keep, in such form as the Minister may approve, all proper and usual accounts and records of all monies received or expended by him or her.
- (2) The Ombudsman shall make the accounting records referred to in *subsection (1)* available at all reasonable times for inspection by the Minister or any member of the Council.

**Accountability of Ombudsman to Public Accounts Committee**

- 22.** (1) The Ombudsman shall, whenever required in writing 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 (in this section referred to as the "Committee"), give evidence to that Committee in relation to—
- (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 that 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 purposes of evaluating the effectiveness of its operations, and
  - (d) any matter affecting the Ombudsman referred to in—
    - (i) a special report of the Comptroller and Auditor General under [section 11\(2\) of the Comptroller and Auditor General \(Amendment\) Act 1993](#), or
    - (ii) 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.

#### Accountability of Ombudsman to other Oireachtas Committees

**23.** (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—

- (a) the Committee referred to in *section 22*,
- (b) the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann, or
- (c) a subcommittee of a Committee referred to in *paragraph (a) or (b)*.

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

(3) The Ombudsman shall not be required to give account before a Committee for any matter that—

- (a) is or has been or may at a future time be the subject of proceedings before a court or tribunal (including an adjudication officer and the Labour Court) in the State, or
- (b) relates to a specific complaint that was or is under investigation by, or has been submitted to, the Ombudsman.

(4) Where the Ombudsman is of the opinion that a matter in respect of which he or she is requested to give an 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 under *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

- (a) the Ombudsman may, not later than 42 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question 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 shall determine the matter.

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

(7) If 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)*, but if the High Court determines that *subsection (3)* does not apply, the Ombudsman shall attend before the Committee to give account for the matter.

- (8) 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.

#### **Annual report of Ombudsman**

- 24.** (1) The Ombudsman shall, not later than 6 months after the end of a financial year—

- (a) prepare an annual report on the performance of the functions of the Ombudsman during that year, and
- (b) submit the report to the Council.

- (2) As soon as may be after receiving the annual report referred to in *subsection (1)*, the Council shall present the report to the Minister and the Minister for Social Protection.

- (3) As soon as may be after receiving the annual report referred to in *subsection (1)*, the Minister shall cause the report to be laid before each House of the Oireachtas.

- (4) An annual report shall include—

- (a) information in such form and regarding such matters as the Minister may direct, and
- (b) a copy of the audited accounts referred to in *section 20* for the financial year concerned,

but nothing in this subsection shall be construed as requiring the Ombudsman to include information the inclusion of which would, in the opinion of the Ombudsman, be likely to prejudice the performance of his or her functions.

- (5) The Ombudsman shall arrange for an annual report that has been laid before each House of the Oireachtas under *subsection (3)* to be published on the internet as soon as practicable after the report has been so laid.

#### **Publication of certain other reports**

- 25.** (1) In this section, “business name” has the meaning given to it in the *Registration of Business Names Act 1963*.

- (2) Not later than 3 months after the end of each financial year, the Ombudsman shall publish a report containing—

- (a) a summary of all complaints made to the Ombudsman during the preceding financial year,
- (b) a review of trends and patterns in the making of complaints to the Ombudsman,
- (c) a breakdown of the method by which all complaints made to the Ombudsman were dealt with during the preceding financial year, and
- (d) a summary of the outcome of all complaints concluded or terminated, including analysis of complaints that were settled during the previous financial year.

- (3) The Ombudsman may, from time to time, prepare and submit to the Minister such other reports in relation to the performance of the functions under this Act as he or she considers appropriate.
- (4) The Ombudsman may publish reports on other matters if he or she considers that it would be in the public interest to do so.
- (5) If the Ombudsman considers that it would be in the public interest to do so, he or she may include in a report under *subsection (2)* in respect of every financial service provider falling within *subsection (6)* the information specified in *subsection (7)*.
- (6) A financial service provider falls within this subsection if, in the preceding financial year, 3 or more complaints made to the Ombudsman relating to the financial service provider have been found to be upheld, substantially upheld or partially upheld.
- (7) The information referred to in *subsection (5)* is—
  - (a) the name, including any trading name and business name (or former trading name and business name), of the financial service provider,
  - (b) where applicable, the identity of any group of companies of which the financial service provider is a member, and
  - (c) the number of complaints found to be upheld, substantially upheld or partially upheld in respect of the financial service provider in the preceding financial year.
- (8) For the purposes of *subsection (7)(b)*, “group of companies” has the same meaning as it has in section 8(3) of the Act of 2014.
- (9) For the purposes of the law of defamation, the publication of the information specified in *subsection (7)* in a report under *subsection (2)* shall be absolutely privileged.
- (10) A report under *subsection (2)* shall not divulge the identity of any complainant nor shall anything be published in the report that may lead to the identification of any complainant unless the complainant consents in writing to such publication.
- (11) For the purposes of this section, where a party to a complaint has appealed against the Ombudsman’s decision that a complaint has been found to be upheld, substantially upheld or partially upheld, the complaint is to be taken to have been so found only when—
  - (a) the decision is affirmed (with or without modification) on appeal, or
  - (b) the appeal is withdrawn, struck out by the High Court or abandoned.

### Strategic plan

- 26.** (1) The Ombudsman shall, as soon as practicable after the establishment day, and thereafter not earlier than 6 months before the end of, and not later than the end of, each subsequent period of 3 years following the anniversary of that day, prepare and submit to the Council a strategic plan in respect of the period of 3 years immediately following the year in which the strategic plan is so submitted.
- (2) The strategic plan referred to in *subsection (1)* shall specify the following:
- (a) the objectives of the Ombudsman;

- (b) the nature and scope of the activities to be undertaken by the Ombudsman;
  - (c) the strategies and policies for achieving the objectives of the Ombudsman;
  - (d) targets and criteria for assessing the performance of the Ombudsman.
- (3) A strategic plan for the purposes of this section shall be in accordance with any requirements notified in writing by the Council to the Ombudsman in relation to the form in which the strategic plan is to be prepared.
- (4) As soon as may be after approving a strategic plan referred to in *subsection (1)*, the Council shall submit the plan to the Minister.
- (5) As soon as may be after receiving the strategic plan referred to in *subsection (1)*, the Minister shall arrange for the plan to be laid before each House of the Oireachtas.
- (6) The Ombudsman shall—
- (a) arrange for a strategic plan that has been laid before each House of the Oireachtas in accordance with *subsection (5)* to be published on the internet as soon as practicable after the plan is so laid, and
  - (b) take all reasonably practical steps to implement the strategic plan as soon as may be after it is laid in accordance with *paragraph (a)*.

## PART 3

### DISSOLUTIONS AND TRANSFERS OF FUNCTIONS TO FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

#### CHAPTER 1

##### *Dissolution and transfer of functions*

##### **Dissolution of bodies**

**27.** The following are dissolved on the establishment day:

- (a) the Financial Services Ombudsman's Bureau;
- (b) the Financial Services Ombudsman Council;
- (c) the office of the Pensions Ombudsman.

##### **Transfer of functions**

**28.** All functions that, immediately before the establishment day, were vested in the Financial Services Ombudsman or the Pensions Ombudsman are, on and from the establishment day, transferred to the Ombudsman.

##### **References in enactments**

**29.** (1) References to any of the dissolved bodies (other than the Financial Services Ombudsman Council) in any enactment (other than this Act) or any instrument made under such an enactment shall, on and after the establishment day, be construed as references to the Office.

- (2) References to the Financial Services Ombudsman Council in any enactment (other than this Act) or any instrument made under such an enactment shall, on and after the establishment day, be construed as references to the Council.
- (3) References to the Financial Services Ombudsman, the Deputy Financial Services Ombudsman or the Pensions Ombudsman in any enactment (other than this Act) or any instrument made under such an enactment shall, on and after the establishment day, be construed as references to the Ombudsman.

#### **Transfer of land and other property**

- 30.** (1) On the establishment day, all lands that, immediately before that day, were vested in the dissolved bodies and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the Office for all the estate or interest therein that, immediately before the establishment day, was vested in the dissolved bodies, but subject to all trusts and equities affecting the lands concerned continuing to subsist and capable of being performed.
- (2) On the establishment day, all property (other than land), including choses-in-action, that, immediately before that day, was vested in the dissolved bodies shall stand vested in the Office without any assignment.
- (3) Every chose-in-action vested in the Office by virtue of *subsection (2)* may, on and from the establishment day, be sued on, recovered or enforced by Office in its own name and it shall not be necessary for the Office, or any of the dissolved bodies, as the case may be, to give notice to any person bound by any such chose-in-action of the vesting by this section.

#### **Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved bodies**

- 31.** (1) All rights and liabilities of a dissolved body arising by virtue of any contract or commitment (expressed or implied) entered into by it before the establishment day shall on that day stand transferred to the Office.
- (2) Every right and liability transferred by *subsection (1)* to the Office may, on and after the establishment day, be sued on, recovered or enforced by or against the Office in its own name, and it shall not be necessary for the Office, or any of the dissolved bodies, as the case may be, to give notice to the person whose right or liability is transferred by that subsection of such transfer.
- (3) Every lease, licence, wayleave or permission granted by any of the dissolved bodies in relation to land or other property vested in the Office by or under this Act, and in force immediately before the establishment day, shall continue in force as if granted by the Office.

#### **Liability for loss occurring before establishment day**

- 32.** (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of any of the functions of a dissolved body shall on and after that day, lie against the Office and not against the dissolved body concerned.
- (2) Any legal proceedings pending immediately before the establishment day to which any of the dissolved bodies is a party, that relate to a function of any of the dissolved bodies, shall be continued, with the substitution in

the proceedings of the Office, in so far as they so relate, and the proceedings shall not abate by reason of such substitution.

- (3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of the agreement have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, shall, in so far as they are enforceable against any of the dissolved bodies be enforceable against the Office and not the dissolved body concerned.
- (4) Any claim made or proper to be made by any of the dissolved bodies in respect of any loss or injury arising from the act or default of any person before the establishment day shall, on and after the establishment day, be regarded as having been made by or proper to be made by the Office and may be pursued and sued for by the Office as if the loss or injury had been suffered by the Office.

#### **Provisions consequent upon conferral of functions or transfer of assets and liabilities**

- 33.** (1) Anything commenced and not completed before the establishment day by or under the authority of any of the dissolved bodies may, in so far as it relates to a function conferred on the Ombudsman by this Act, be carried on or completed on or after that day by the Ombudsman.
- (2) Every instrument made under enactment and every document (including any certificate) granted or made, by any of the dissolved bodies, if and in so far as it was operative immediately before the establishment day, shall have effect on and after that day as if it had been granted or made by the Office.
- (3) References to any of the dissolved bodies in the memorandum of association or articles of association of any company relating to a function conferred on the Office by this Act shall, on and after the establishment day, be construed as references to the Office.
- (4) All moneys, stocks, shares and securities transferred by *section 30* that, immediately before the establishment day, were standing in the name of any of the dissolved bodies shall, on the request of the Office, be transferred to the Office in its own name.
- (5) A certificate signed by the Minister that any property, right or liability has or has not vested in the Ombudsman under *section 30* or *31* shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.
- (6) The Minister may from time to time advance to the Ombudsman, out of moneys provided by the Oireachtas, such sums as the Minister may determine for the purposes of the performance of the functions relating to superannuation conferred on the Financial Services Ombudsman Council by the Act of 1942.

#### **Records of dissolved bodies**

- 34.** (1) Each record held immediately before the establishment day by—
- (a) the Financial Services Ombudsman's Bureau,
  - (b) the Financial Services Ombudsman, or
  - (c) the office of the Pensions Ombudsman,

shall, on that day, stand transferred to the Office and shall, on and after that day, be property of the Office and be regarded as being held by the Office.

- (2) Each record held, immediately before the establishment day, by the Financial Services Ombudsman Council shall, on that day, stand transferred to the Council and shall, on and after that day, be property of the Council and be regarded as being held by the Council.

## CHAPTER 2

### *Transfer of staff and superannuation*

#### **Transfer of staff to office of Ombudsman**

- 35.** (1) On the commencement of this Act, the Ombudsman shall accept into his or her employment each person who immediately before that day was a member of the staff of the Financial Services Ombudsman's Bureau on such terms and conditions of service relating to remuneration and superannuation as are not less favourable than the terms and conditions of service relating to remuneration and superannuation to which the person was subject immediately before that day.
- (2) The terms and conditions to which a person is subject upon his or her becoming a member of the staff of the Ombudsman under *subsection (1)* shall be deemed to have been determined by the Ombudsman in accordance with *section 15*.
- (3) In relation to a person transferred to the staff of the Ombudsman under *subsection (1)*, previous service with the Financial Services Ombudsman's Bureau shall be reckonable for the purpose of, but subject to any exceptions or exclusions in, the following enactments:
- (a) the Redundancy Payments Acts 1967 to 2014;
  - (b) the *Protection of Employees (Part-Time Work) Act 2001*;
  - (c) the *Protection of Employees (Fixed-Term Work) Act 2003*;
  - (d) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
  - (e) the Unfair Dismissals Acts 1977 to 2015;
  - (f) the Terms of Employment (Information) Acts 1994 to 2014;
  - (g) the *Organisation of Working Time Act 1997*;
  - (h) the Parental Leave Acts 1998 and 2006;
  - (i) the *Carer's Leave Act 2001*;
  - (j) the Maternity Protection Acts 1994 and 2004;
  - (k) the Adoptive Leave Acts 1995 and 2005;
  - (l) the *Paternity Leave and Benefit Act 2016*.
- (4) On the establishment day, each person who immediately before that day was a member of the staff of the Pensions Ombudsman shall be accepted into the office of the Ombudsman on secondment for a period of 2 years from the establishment day on such terms and conditions of service relating to remuneration and superannuation as are not less favourable than the terms and conditions of service relating to remuneration and



superannuation to which the person was subject immediately before that day.

### CHAPTER 3

#### *Accounts and audits*

##### **Final accounts and final annual report of dissolved bodies**

- 36.** (1) The Ombudsman shall, in respect of the period specified in *subsection (3)*, prepare final accounts of each of the dissolved bodies.
- (2) The Ombudsman shall submit the final accounts referred to in *subsection (1)* to the Comptroller and Auditor General for audit not later than 4 months after the establishment day.
- (3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of a dissolved body.
- (4) The Ombudsman shall prepare a final annual report for each of the dissolved bodies and submit the reports to the Minister and Minister for Social Protection not later than 6 months after the establishment day.
- (5) *Section 20* shall apply with the necessary modifications in relation to final accounts prepared under this section.
- (6) *Section 24* shall apply with the necessary modifications in relation to an annual report prepared under this section.

### PART 4

#### FINANCIAL SERVICES AND PENSIONS OMBUDSMAN COUNCIL

##### **Establishment of Council**

- 37.** (1) There shall stand established on the establishment day a body, which shall be known as Comhairle an Ombudsman Seirbhísí Airgeadais agus Pinsean or, in the English language, as the Financial Services and Pensions Ombudsman Council (in this Act referred to as the “Council”) to perform the functions conferred on it by this Act.
- (2) The Council shall consist of not less than 5 and not more than 7 members (including the chairperson) as the Minister decides, of which there shall be the following:
- (a) a chairperson who shall have knowledge and experience of consumer issues relating to the provision of either, or both, financial services and pension services;
- (b) ordinary members, including:
- (i) not less than 2 persons who have knowledge or experience of consumer protection and other consumer issues relating to the provision of financial services;
- (ii) not less than one person who has knowledge or experience of the financial services industry; and
- (iii) not less than one person who has knowledge or experience in relation to the pensions industry.

- (3) Subject to *subsection (4)*, the members of the Council shall be appointed by the Minister from among persons in respect of whom a recommendation for the purposes of this section has been made by the Public Appointments Service consequent upon the holding of a competition in accordance with the Act of 2004.
- (4) One member of the Council shall be nominated for appointment under *subsection (3)* by the Minister for Social Protection from among the persons referred to in *subsection (3)*.
- (5) The Public Appointments Service shall, in relation to a competition referred to in *subsection (3)*, not make a recommendation for the purposes of that subsection in respect of more than 3 persons in respect of each vacancy.
- (6) The Minister shall appoint a chairperson from among the members of the Council.
- (7) A member of the Council shall hold office for such period not exceeding 5 years from the date of his or her appointment as the Minister may determine.
- (8) Subject to *subsection (9)*, the Minister may reappoint a person whose term of office as a member of the Council expires by the efflux of time.
- (9) The member of the Council referred to in *subsection (4)* may be reappointed only if renominated by the Minister for Social Protection.
- (10) The Ombudsman shall, on the request of the chairperson of the Council, as far as it is practical to do so, arrange for the Council to be provided with such administrative services (including technical and legal advice) as the Council requires to perform its functions.
- (11) *Schedule 2* shall apply to the Council.

#### **Chairperson and members of Financial Services Ombudsman Council**

- 38. (1) The person who, immediately before the establishment day, was the chairperson of the Financial Services Ombudsman Council shall, on the establishment day, become and be the chairperson of the Council, and shall continue as such chairperson under this Part subject to the same terms and conditions as applied to his or her appointment immediately before such commencement.
- (2) A person who immediately before the establishment day was a member of the Financial Services Ombudsman Council, shall, on the establishment day, become and be a member of the Council, and shall continue as such member under this Part subject to the same terms and conditions as applied to his or her appointment immediately before such commencement.

#### **Financial Services Ombudsman Council**

- 39. The functions carried out by the Financial Services Ombudsman Council before the establishment day, shall on and from the establishment day be deemed to have been carried out by the Council.

#### **Functions of Council**

- 40. (1) The functions of the Council shall be—
  - (a) to determine and prescribe by regulation, in accordance with *section 43*, the financial services industry levy,

- (b) to keep under review the efficiency and effectiveness of the Ombudsman and to advise the Minister, either at the Minister's request or on its own initiative, on any matter relevant to the performance of the functions of the Ombudsman,
  - (c) to advise the Ombudsman on any matter on which the Ombudsman seeks advice (including advice in relation to the development and publication of guidelines and procedures in relation to the complaints process and investigations under this Act), and
  - (d) to carry out such other functions as are conferred on it by this Act.
- (2) The Council shall have all such powers as are necessary or expedient for the performance of its functions.
- (3) The Council shall have no role in the manner in which the Ombudsman deals with a particular complaint.

#### **Accountability of chairperson of Council to Oireachtas Committees**

- 41.** (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—
- (a) 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,
  - (b) the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann, or
  - (c) a sub-committee of a committee referred to in *paragraph (a) or (b)*.
- (2) Subject to *subsection (3)*, the chairperson of the Council shall, at the request in writing of a Committee, attend before it to give account for the general administration and functions of the Council.
- (3) The chairperson of the Council shall not be required to give account before a Committee for any matter that—
- (a) is or has been or may at a future time be the subject of proceedings before a court or tribunal (including an adjudication officer and the Labour Court) in the State, or
  - (b) relates to a specific complaint that was or is under investigation by, or has been submitted to, the Ombudsman.
- (4) Where the chairperson of the Council is of the opinion that a matter in respect of which he or she is requested to give an 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 chairperson of the Council is before it, the information shall be so conveyed in writing.
- (5) Where the chairperson of the Council 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 relates to a matter the subject of that opinion—
- (a) the chairperson of the Council may, not later than 42 days after being informed by the Committee of its decision not to do so, apply to the

High Court in a summary manner for decision of the question 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 shall determine the matter.
- (6) Pending the decision of an application under *subsection (5)*, the chairperson of the Council shall not attend before the Committee to give account for the matter the subject of the application.
- (7) If 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)*, but if the High Court determines that *subsection (3)* does not apply, the chairperson of the Council shall attend before the Committee to give account for the matter.
- (8) In the performance of his or her duties under this section, the chairperson of the Council 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.

#### **Annual report of Council**

- 42.** (1) The chairperson of the Council shall prepare a report on the work of the Council in respect of each financial year.
- (2) A report prepared under *subsection (1)* shall—
- (a) be included in the annual report of the Ombudsman, and
  - (b) include information in such form and regarding such matters as the Minister may direct, but nothing in this subsection shall be construed as requiring the chairperson of the Council to include:
    - (i) information the inclusion of which would, in his or her opinion, be likely to prejudice the performance of the functions of the Council; or
    - (ii) information or comments on any complaint that has been, or is being, investigated by the Ombudsman.

#### **Financial services industry levy**

- 43.** (1) In this section, “Council regulations” means regulations made by the Council, with the consent of the Minister, under *subsection (4)*.
- (2) Each financial service provider shall be liable to pay an annual charge (in this Act referred to as the “financial services industry levy”) in respect of the services provided by the Ombudsman to the financial services industry.
- (3) The financial services industry levy shall be paid to the Office on or before the date prescribed by the Council in regulations, in respect of the period concerned and in the manner specified by the Council.
- (4) The Council shall, with the consent of the Minister, prescribe by regulation the financial services industry levy to be paid having regard to the expenditure incurred or reasonably expected to be incurred by the Office in relation to complaints received by the Office in relation to financial service providers.
- (5) The Council regulations may, having had regard to the number and type of complaints received by the Ombudsman, prescribe a different financial

services industry levy under *subsection (4)* in respect of different financial service providers or different classes of financial service providers.

(6) The amount of the financial services industry levy prescribed under *subsection (4)* shall not exceed those sums necessary to fund the operation of the Office having regard to the income and expenditure mentioned in *section 19*.

(7) The Council regulations may prescribe—

(a) having had regard to one or more of the following:

- (i) the amount of the outstanding levy or annual charge;
- (ii) the length of delay in payment of the outstanding levy or charge;
- (iii) a pattern, if any, of failure to pay, or to pay on time, the levy or charge,

the penalties that shall be payable in cases of failure to pay the financial services industry levy or failure to pay the annual charge on time,

(b) requirements in relation to the keeping of records and making of returns to the Office by persons who are liable to pay the financial services industry levy,

(c) requirements in relation to the collection and recovery of the financial services industry levy by the Office,

(d) general or special exemptions from the payment of the financial services industry levy (wholly or partly) in different circumstances,

(e) a reduction in the financial services industry levy having regard to the method of payment of the charge, and

(f) the financial service providers and different classes of financial services required to pay the financial services industry levy.

(8) The financial services industry levy shall be recoverable by the Office as a simple contract debt in any court of competent jurisdiction.

#### **Annotations**

##### **Editorial Notes:**

- |            |  |
|------------|--|
| <b>E6</b>  | Power pursuant to subs. (4) exercised (29.03.2024) by <i>Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2024</i> S.I. No. 99 of 2024, in effect as per reg. 2.    |
| <b>E7</b>  | Power pursuant to subs. (4) exercised (1.02.2023) by <i>Financial Services And Pensions Ombudsman Act 2017 (Financial Services And Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2023</i> (S.I. No. 6 of 2023), in effect as per reg. 2.    |
| <b>E8</b>  | Power pursuant to subs. (4) exercised (4.03.2022) by <i>Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2022</i> (S.I. No. 93 of 2022), in effect as per reg. 2.   |
| <b>E9</b>  | Power pursuant to subs. (4) exercised (19.03.2021) by <i>Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2021</i> (S.I. No. 117 of 2021), in effect as per reg. 2. |
| <b>E10</b> | Power pursuant to subs. (4) exercised (27.03.2020) by <i>Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2020</i> (S.I. No. 89 of 2020), in effect as per reg. 2.  |

- E11** Power pursuant to subs. (4) exercised (10.05.2019) by *Financial Services And Pensions Ombudsman Act 2017 (Financial Services And Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2019* (S.I. No. 201 of 2019), in effect as per reg. 2.
- E12** Power pursuant to subs. (4) exercised (25.06.2018) by *Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2018* (S.I. No. 214 of 2018), in effect as per reg. 2.

## PART 5

### COMPLAINTS TO THE OMBUDSMAN

#### Making of complaints

**44.** (1) Subject to *section 51(2)*, a complainant may make a complaint to the Ombudsman in relation to the following:

(a) the conduct of a financial service provider involving—

- (i) the provision of a financial service by the financial service provider,
- (ii) an offer by the financial service provider to provide such a service, or
- (iii) a failure by the financial service provider to provide a particular financial service requested by the complainant;

(b) the conduct of a pension provider involving—

- (i) the alleged financial loss occasioned to a complainant by an act of maladministration done by or on behalf of the pension provider, or
- (ii) any dispute of fact or law that arises in relation to conduct by or on behalf of the pension provider;

(c) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day that was refused as being outside the applicable time limits in the Act of 1942 or the Act of 1990 respectively and that has been resubmitted on or after the establishment day.

(2) A complainant may not make a complaint under *subsection (1)* where—

(a) the conduct giving rise to the complaint is or has been the subject of—

- (i) legal proceedings before a court or tribunal, or
- (ii) subject to *subsection (3)*, a decision of the Ombudsman, the Financial Services Ombudsman or the Pensions Ombudsman,

(b) the substance of the complaint has been communicated to the financial service provider or the pension provider concerned and that financial service provider or pension provider has, subject to *section 54*, not been given a reasonable opportunity to deal with the matter, or

(c) the conduct complained of relates to a matter that—

- (i) is within the jurisdiction of the Workplace Relations Commission or the Pensions Authority, or an alternative suitable forum or tribunal,

- (ii) is of a class prescribed by regulations made by the Minister under *section 4*, or
  - (iii) occurred outside the time limits specified in *section 51*.
- (3) Where, in respect of a complaint made under the Act of 1942—
- (a) the Financial Services Ombudsman refused to consider a complaint on the basis that the complaint was outside the time limit specified in the Act of 1942 for making complaints, and
  - (b) that complaint under the Act of 1942 now falls within the time limit specified in *section 51*,
- the complainant may make a further complaint to the Ombudsman.
- (4) A complainant may make a complaint under *subsection (1)* where the conduct complained of occurred before the commencement of this Act provided the conduct concerned occurred within the time limits specified in *section 51*.
- (5) A complaint under *subsection (1)* shall, subject to *subsection (6)*, be in writing or such format as the Ombudsman considers appropriate in the circumstances.
- (6) The Ombudsman may, where he or she considers it appropriate to do so, accept a complaint that is not in writing and, where it is so accepted, the Ombudsman shall reduce the complaint to writing as soon as practicable.
- (7) The Ombudsman shall publish on his or her website or by way of other communications generally available to the public the format of complaints that are acceptable.
- (8) As soon as practicable after receiving a complaint in relation to the conduct of a financial service provider or a pension provider, the Ombudsman shall provide the financial service provider or the pension provider, as the case may be, with details of the complaint.
- (9) The Ombudsman may enter into an arrangement with a person under which that person will receive complaints on behalf of the Ombudsman.
- (10) A complaint received by a person under the arrangement referred to in *subsection (9)* is, for the purposes of this Part, taken to have been received by the Ombudsman.
- (11) Where the Bank, or the Pensions Authority, receives a complaint that appears to be within the jurisdiction of the Ombudsman—
- (a) the Bank or the Pensions Authority, as the case may be, shall, without delay, refer the complaint to the Ombudsman for investigation, and
  - (b) a complaint made under this subsection is, for the purposes of this Part, taken to have been made under *subsection (1)*, by the complainant concerned.

#### **Death or disability of complainant**

- 45.** (1) Where a complainant dies, is a minor or is otherwise unable to act for himself or herself, then—
- (a) any complaint which a complainant might otherwise have made or referred under this Part may be made or referred by the appropriate person, and

(b) anything in the process of being done by or in relation to a complainant under or by virtue of this Part may be continued by or in relation to the appropriate person,

and any reference in this Part, other than in this section, to a complainant shall be construed as including a reference to the appropriate person.

(2) For the purposes of *subsection (1)*—

(a) “appropriate person” means—

(i) where the complainant has died, his or her legal personal representative, or

(ii) in any other case, a member of his or her family, or some other person who is considered by the Ombudsman to be a suitable person to represent him or her,

and

(b) the reference to “complainant”, in so far as that subsection relates to a person who is a minor or who is otherwise unable to act for himself or herself, includes a reference to an intending complainant.

#### **Continuation of investigation on death of complainant**

**46.** The power of the Ombudsman in relation to the continuation of an investigation on the death of a complainant may be exercised in relation to the following:

(a) any complaint received by the Ombudsman on or after the establishment day;

(b) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day where a decision of the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be, has not been made.

#### **Powers of Ombudsman in relation to investigation of complaint**

**47.** (1) Other than in respect of a complaint specified in *section 44(2)*, the Ombudsman may conduct an investigation into a complaint referred to him or her.

(2) The Ombudsman shall keep the parties to the complaint informed as to the progress of the investigation.

(3) In conducting an investigation, the Ombudsman may—

(a) require any person, who in the opinion of the Ombudsman, is in possession of information, or has a document or thing in his or her power or control, that is relevant to the investigation, to—

(i) provide to him or her that information, either orally or in writing,

(ii) produce to him or her that document or a copy of the document,

and

(b) require any person to attend before him or her, either voluntarily or by way of summons, and be examined on oath in relation to any matter, including to produce a document or copy of a document referred to in



*paragraph (a)(ii)*, that appears to the Ombudsman to be relevant to the investigation.

- (4) The Ombudsman shall give notice of a requirement under *subsection (3)* either orally or in writing and shall specify in the notice—
  - (a) the information or document required,
  - (b) the date by which the information or document is required, and
  - (c) the place at which attendance, if any, is required.
- (5) Subject to any regulations made under *section 4*, the procedure for the making of complaints and the conduct of investigations shall be such as the Ombudsman considers appropriate in all the circumstances of the case, and he or she may, in particular, obtain information from such persons and in such manner, and make such enquiries, as he or she thinks fit.
- (6) When investigating a complaint about the conduct of a financial service provider or a pension provider, the Ombudsman may, at any reasonable time—
  - (a) enter and inspect any business premises occupied or used by the financial service provider or the pension provider, or by any other body or person who is associated with that provider, and
  - (b) inspect any document or thing in or on the premises.
- (7) If a document is kept in a non-legible form, the Ombudsman may request the person who appears to be in charge of the document to reproduce it in a legible form or to provide to the Ombudsman such information as the Ombudsman reasonably requires in relation to that document.
- (8) Without prejudice to the powers conferred by this Part, the Ombudsman shall, for the purposes of an investigation under this section, have all the powers, rights and privileges vested in the High Court or a judge of that court on the hearing of civil proceedings in respect of the examination of witnesses, including the administration of oaths and affirmations and the examination of witnesses outside the State.
- (9) Subject to this Part, 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.
- (10) Information provided by a person in response to a requirement under *subsection (3)*, or an answer to a question put to a person in the course of a requirement under *subsection (3)*, is not admissible as evidence against that person in criminal proceedings other than in respect of perjury or an offence committed under *section 59*.
- (11) Nothing in this section shall require any person to provide information or produce a document, or a copy of a document, the communication of which is subject to legal professional privilege.

#### Annotations

#### Modifications (not altering text):

- C1** Reference to perjury construed (28.07.2021) by *Criminal Justice (Perjury and Related Offences) Act 2021* (13/2021), s. 4(2) and sch. 2 item 55, S.I. No. 378 of 2021.

#### References to perjury or subornation of perjury

4. ...

- (2) A reference in an enactment specified in Schedule 2 to perjury or to subornation of perjury, howsoever described, in relation to an act committed on or after the coming into operation of this subsection, shall be construed as a reference to perjury or to subornation of perjury, as the case may be, within the meaning of this Act.

...

#### SCHEDULE 2

Section 4 (2)

...

55. Financial Services and Pensions Ombudsman Act 2017, section 47(10)

...

#### **Investigation by Ombudsman of complaints made before establishment day**

**48.** The power of the Ombudsman to conduct an investigation under [section 47](#) shall apply to any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day that—

- (a) had not been assessed as to its suitability for consideration by the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be,
- (b) was refused as being outside the applicable time limits in the Act of 1942 or the Act of 1990 respectively and that has been resubmitted, on or after the establishment day, or
- (c) was being investigated by the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be.

#### **Staying of court proceedings**

**49.** Where—

- (a) a complaint has been made to the Ombudsman, and
- (b) any party to the complaint subsequently commences proceedings in any court against any other party to the complaint in respect of any of the matters which are the subject of the complaint,

then, any party to the proceedings may at any time after an appearance has been entered, and before delivering any pleadings or taking any other steps in the proceedings, apply to the court to stay the proceedings and the court, if it is satisfied that—

- (i) there is no sufficient reason why the matter in respect of which the said proceedings have been commenced should not be investigated by the Ombudsman, and
- (ii) the party that commenced the proceedings was at the time when the proceedings were commenced and still remains ready and willing to do all things necessary for the proper conduct of the investigation,

shall make an order staying the proceedings.

## **PART 6**

### **COMPLAINTS PROCEDURE**

**Jurisdiction of Ombudsman**

50. (1) Notwithstanding *sections 44(2)(a)(i)* and *54(1)*, the Ombudsman may accept a complaint against a financial service provider or a pension provider that has initiated legal proceedings in relation to a matter to which the complaint relates, where the Ombudsman believes, based on reasonable grounds, that the financial service provider or the pension provider, as the case may be, has begun those proceedings in order to prevent the making of the complaint, or to frustrate or delay its investigation.
- (2) Where a question arises as to whether the Ombudsman has jurisdiction, under this Act, to investigate a complaint, the question shall be determined by the Ombudsman whose decision shall be final.
- (3) The Ombudsman shall not investigate or make a decision on a complaint where—
- (a) the internal dispute resolution procedures required under *section 54* have not been complied with,
  - (b) there are or have been proceedings (other than where the proceedings have been stayed under *section 49*) before any court in respect of the matter that is the subject of the investigation,
  - (c) the complaint relates to a matter that is within the jurisdiction of the Workplace Relations Commission or Pensions Authority or an alternative suitable forum or tribunal, or
  - (d) the complaint, or any matter arising in connection with the complaint, is excluded from the jurisdiction of the Ombudsman by regulations made under *section 4*.

**Time limits for complaints to Ombudsman**

51. (1) A complaint in relation to conduct referred to in *section 44(1)(a)* that does not relate to a long-term financial service shall be made to the Ombudsman not later than 6 years from the date of the conduct giving rise to the complaint.
- (2) A complaint in relation to—
- (a) conduct referred to in *section 44(1)(a)* that, subject to the requirements specified in *subsection (3)*, relates to a long-term financial service, or
  - (b) conduct referred to in *section 44(1)(b)*, that is subject to the requirements specified in *subsection (4)*,
- shall be made to the Ombudsman within whichever of the following periods is the last to expire:
- (i) 6 years from the date of the conduct giving rise to the complaint;
  - (ii) 3 years from the earlier of the date on which the person making the complaint became aware, or ought reasonably to have become aware, of the conduct giving rise to the complaint;
  - (iii) such longer period as the Ombudsman may allow where it appears to him or her that there are reasonable grounds for requiring a longer period and that it would be just and equitable, in all the circumstances, to so extend the period.
- (3) The requirements referred to in *subsection (2)(a)* are that—

- (a) the long-term financial service concerned has not expired or otherwise been terminated more than 6 years before the date of the complaint, and the conduct complained of occurred during or after 2002, or
  - (b) the Ombudsman has allowed a longer period under *subsection (2)(iii)*.
- (4) The requirements referred to in *subsection (2)(b)* are that—
- (a) where the conduct occurred prior to the establishment day, that conduct occurred within the period between 13 April 1996 and the establishment day, or
  - (b) the Ombudsman has allowed a longer period under *subsection (2)(iii)*.
- (5) For the purposes of *subsections (1) and (2)*—
- (a) conduct that is of a continuing nature is taken to have occurred at the time when it stopped and conduct that consists of a series of acts or omissions is taken to have occurred when the last of those acts or omissions occurred, and
  - (b) conduct that consists of a single act or omission is taken to have occurred on the date of that act or omission.
- (6) The time limits specified in this section shall, on and after the establishment day, apply to the following:
- (a) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman which had not been assessed as to its suitability for consideration by the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be;
  - (b) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day that was refused as being outside the applicable time limits in the Act of 1942 or the Act of 1990 respectively and that has been resubmitted to the Ombudsman on or after the establishment day.

### **Declining to investigate**

- 52.** (1) The Ombudsman may decline to investigate, or discontinue an investigation of, a complaint where, in the opinion of the Ombudsman—
- (a) the complaint is frivolous or vexatious or was not made in good faith,
  - (b) the subject matter of the complaint is trivial,
  - (c) the conduct complained of occurred at too remote a time to justify investigation,
  - (d) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the conduct complained of,
  - (e) the complainant has no interest or an insufficient interest in the conduct complained of, or
  - (f) the subject matter of the complaint is of such a degree of complexity that the courts are a more appropriate forum.
- (2) The Ombudsman may make preliminary inquiries for the purposes of deciding whether a complaint should be investigated under this Part and may request the complainant to provide further written particulars of the complaint within such reasonable period specified by the Ombudsman.

- (3) The Ombudsman may decide not to continue to investigate a complaint where the complainant fails within a reasonable period to comply with a request for further written particulars.
- (4) The Ombudsman shall determine a complaint under *section 44* to be inadmissible where it was made after the expiry of the time limits specified in *section 51*.
- (5) As soon as practicable after deciding not to investigate a complaint, or to discontinue an investigation of a complaint, the Ombudsman shall inform the complainant in writing of the decision and the reasons for it.

#### Complaints declined where *section 52* applies

53. The Ombudsman may, where *section 52* applies, decline to investigate, or discontinue an investigation of, a complaint received—

- (a) by the Ombudsman on or after the establishment day,
- (b) by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day where a decision of the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be, has not been made.

#### Use of internal dispute resolution procedures

54. (1) The Ombudsman may decide not to investigate or make a decision on a complaint where—

- (a) the complainant has not engaged with the financial service provider or the pension provider concerned, and
  - (b) that financial service provider or pension provider has not been given a reasonable opportunity to deal with the complaint, as the case may be, through the internal dispute resolution procedures of the provider concerned.
- (2) The time limit specified in *section 51* is suspended for the period during which a complaint is being considered under the appropriate internal dispute resolution procedure.
- (3) Notwithstanding *subsection (1)* the Ombudsman may consider a complaint against a financial service provider or a pension provider before the internal dispute resolution process is completed where—
- (a) the financial service provider or the pension provider concerned has failed to complete the internal dispute resolution process referred to in *subsection (1)* so as to allow the complainant to make a complaint to the Ombudsman within the time limit specified in *section 51*, or
  - (b) the Ombudsman determines a complaint is of such importance as to warrant waiving the internal dispute resolution procedure.
- (4) The Ombudsman may waive the internal dispute resolution procedures referred to in *subsection (2)*, in respect of the following:
- (a) any complaint received by the Ombudsman on or after the establishment day;
  - (b) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day which had not been assessed as to its suitability for consideration by the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be;

- (c) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day that was refused as being outside the applicable time limits in the Act of 1942 or the Act of 1990 respectively that has, subject to the time limits in *section 51*, been resubmitted on or after the establishment day.
- (5) The Ombudsman shall publicise on his or her website, and make available to financial service providers and pension providers, information in respect of his or her discretion to waive the internal dispute resolution procedures referred to in *subsection (4)*.

#### **Requirement for internal dispute resolution procedures**

- 55.** (1) The Minister may by regulation require financial service providers and pension providers to establish procedures for dealing with complaints.
- (2) Regulations under this section may—
- (a) require procedures referred to in *subsection (1)* to comprise specified steps, including, as the Minister considers appropriate—
    - (i) the making of an application for a determination to be made in relation to the complaint,
    - (ii) the conducting of a hearing in relation to the matter concerned, and
    - (iii) the making of a determination in relation to the matter,
  - (b) require one or more of the internal dispute resolution steps to be taken or completed within a specified period,
  - (c) require the provision of information in relation to the existence of those procedures and how they may be availed of,
  - (d) prescribe such other requirements as the Minister considers necessary or expedient for the purpose of enabling complaints referred to in this subsection to be dealt with or resolved,
  - (e) require financial service providers and pension providers to publish their internal dispute resolution procedures, and
  - (f) as respects schemes, specify different requirements by reference to the class of scheme concerned (being a class defined in the regulations by reference to the number of members of the scheme or such other matters as the Minister considers appropriate).

#### **Conduct of investigation**

- 56.** (1) The conduct of investigations under this Part shall be undertaken as the Ombudsman considers appropriate in all the circumstances of the case and in a manner that is appropriate and proportionate to the nature of the complaint.
- (2) The Ombudsman shall advise the parties to the complaint in writing of the conduct of investigation to be undertaken under *subsection (1)*.
- (3) Where the Ombudsman proposes to conduct an investigation into a complaint made under this Part, he or she shall provide the parties, and any other person who, in the opinion of the Ombudsman, might be adversely affected by any decision he or she may make in relation to the complaint, an opportunity to—

- (a) make submissions with respect to the conduct the subject of the complaint, and
  - (b) comment on any allegations contained in the complaint or reference.
- (4) The Ombudsman shall, without prejudice to the form of investigation, ensure investigations are conducted otherwise than in public.
- (5) The Ombudsman may, in the course of investigating a complaint, periodically report to the complainant on the progress of the investigation and, in so doing, may make such comments to the complainant on the investigation and its consequences and implications as the Ombudsman thinks fit.
- (6) The Ombudsman may, in the course of investigating a complaint, issue a preliminary decision to the relevant parties to the complaint, indicating the potential decision to be taken by the Ombudsman and any evidence or facts considered to arrive at that preliminary decision.
- (7) Where the Ombudsman considers, during an investigation or following the completion of an investigation, that there is—
- (a) a persistent pattern of complaints (whether he or she finds that such complaints are upheld or not),
  - (b) a persistent pattern of facts or evidence arising from the complaints, or
  - (c) any other matter that would be of concern to the Bank or the Pensions Authority,
- the Ombudsman shall inform the Bank or the Pensions Authority, as the case may be.

### **Complaints for investigation by Ombudsman**

- 57.** Investigations by the Ombudsman in respect of the following complaints shall be conducted in accordance with this Act:
- (a) any complaint received by the Ombudsman on or after the establishment day;
  - (b) any complaint received by the Financial Services Ombudsman or the Pensions Ombudsman before the establishment day where a decision of the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be, or a decision of the Ombudsman has not been made.

### **Mediation**

- 58.** (1) The Ombudsman shall, as part of an investigation, try, as far as possible, to resolve a complaint by mediation.
- (2) The Ombudsman shall engage with complainants and providers to ensure that the objective of mediation is understood to promote engagement in the mediation process.
- (3) Participation in mediation by the parties to a complaint is voluntary, and a party may withdraw at any time.
- (4) The Ombudsman may, on reasonable grounds, abandon an attempt to resolve a complaint by mediation as he or she considers appropriate.

- (5) Evidence of anything said or admitted during a mediation, or an attempted mediation, of a complaint, and any document prepared for the purposes of the mediation, are not admissible—
  - (a) in any subsequent investigation, under this Part, of the complaint (unless the person who made the admission, or to whom the document relates, consents to its admission), or
  - (b) in any proceedings before a court or a tribunal in the State.
- (6) Where an attempt to resolve a complaint by mediation is unsuccessful, the Ombudsman shall—
  - (a) deal with the complaint in accordance with *section 56*, and
  - (b) notify the parties in writing accordingly.

### Obstruction of work of Ombudsman

#### 59. (1) A person who—

- (a) obstructs or hinders the Ombudsman in the performance of the functions conferred by this Act,
- (b) does anything which would, if the Ombudsman were a court having power to commit for contempt of court, be contempt of such court,
- (c) without reasonable excuse, fails to comply with a requirement or request made by the Ombudsman under this Act,
- (d) in purported compliance with a requirement or request referred to in *paragraph (c)*, gives information that the person knows to be false or misleading, or
- (e) refuses to comply with a summons to attend before, or to be examined on oath by, the Ombudsman,

commits an offence and is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 3 months, or both.

- (2) The Ombudsman may apply to the Circuit Court for an order against a person where it appears to the Ombudsman that the person—
  - (a) has failed to comply with a requirement made to the person by the Ombudsman under *section 47*,
  - (b) has failed to comply with a summons under *section 47(3)(b)* to appear before the Ombudsman for examination,
  - (c) having complied with a summons referred to in *paragraph (b)*, has refused to be examined, or
  - (d) has otherwise obstructed the Ombudsman in the exercise of a power conferred by this Part.
- (3) Where, on hearing an application seeking an order under *subsection (2)* against a person, the Circuit Court is satisfied that the person concerned has failed or refused to do the act in question, the Circuit Court may make an order requiring the person to do that act.
- (4) The Circuit Court may not hear an application for an order under *subsection (2)* unless—



- (a) the person against whom the order is sought appears at the hearing, or
  - (b) the court is satisfied that that person has been served with a copy of the application.
- (5) On the hearing of an application for an order under *subsection (2)* against a person, the Circuit Court shall set aside a requirement made to the person—
- (a) to provide information,
  - (b) to appear before and be examined by the Ombudsman,
  - (c) to produce a document or other thing, or
  - (d) to provide a copy of a document,
- if it is of the opinion that the person is entitled to claim legal professional privilege with respect to the provision of the information, the production of the document or thing or the provision of the copy.

#### **Complaints and redress: financial service providers**

60. (1) On completing an investigation of a complaint relating to a financial service provider that has not been settled or withdrawn, the Ombudsman shall make a decision in writing that the complaint—
- (a) is upheld,
  - (b) is substantially upheld,
  - (c) is partially upheld, or
  - (d) is rejected.
- (2) A complaint may be found to be upheld, substantially upheld or partially upheld only on one or more of the following grounds:
- (a) the conduct complained of was contrary to law;
  - (b) the conduct complained of was unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
  - (c) although the conduct complained of was in accordance with a law or an established practice or regulatory standard, the law, practice or standard is, or may be, unreasonable, unjust, oppressive or improperly discriminatory in its application to the complainant;
  - (d) the conduct complained of was based wholly or partly on an improper motive, an irrelevant ground or an irrelevant consideration;
  - (e) the conduct complained of was based wholly or partly on a mistake of law or fact;
  - (f) an explanation for the conduct complained of was not given when it should have been given;
  - (g) the conduct complained of was otherwise improper.
- (3) A decision of the Ombudsman under this section shall be communicated to the parties by the Ombudsman and such decision shall include the following:
- (a) the decision under *subsection (1)*;

- (b) the grounds for the decision under *subsection (2)*;
  - (c) any direction given under *subsection (4)*.
- (4) Where a complaint is found to be upheld, substantially upheld or partially upheld, the Ombudsman may direct the financial service provider to do one or more of the following:
- (a) review, rectify, mitigate or change the conduct complained of or its consequences;
  - (b) provide reasons or explanations for that conduct;
  - (c) change a practice relating to that conduct;
  - (d) pay an amount of compensation to the complainant for any loss, expense or inconvenience sustained by the complainant as a result of the conduct complained of;
  - (e) take any other lawful action that the Ombudsman considers appropriate having had regard to all the circumstances of the complaint.
- F8[(4A) (a) In *paragraph (b)* and *subsections (4B)* and *(4C)* “Act of 2019” means the Consumer Insurance Contracts Act 2019.
- (b) *Subsection (4B)* is without prejudice to the generality of *subsection (2)* as it operates to enable the Ombudsman to make decisions by reference to, amongst other things, the enactments concerning the financial service concerned, including, as the case may be, the Act of 2019.
- (4B) The provisions of section 26 of the Act of 2019 apply in relation to the power of the Ombudsman under *subsection (4)(d)* to direct the payment of compensation in a complaint involving a contract of insurance as they apply in relation to the power of a court of competent jurisdiction to make an award of damages in a claim under a contract of insurance.
- (4C) The power under section 26 of the Act of 2019 shall not be exercised by the Ombudsman to an extent that such exercise would have the result that the total sum of compensation payable in respect of the complaint concerned exceeds the amount which, by way of compensation, the Ombudsman has jurisdiction to direct the payment of under this Act.]
- (5) Other than where a greater amount of compensation is prescribed by regulations made under *section 4*, the Ombudsman may not direct the payment of an amount of compensation exceeding—
- (a) €26,000 per annum, where the subject of a complaint is an annuity, or
  - (b) €250,000 in respect of all other complaints.
- (6) A direction under *subsection (4)* which requires a financial service provider to pay an amount of compensation may provide for interest to be paid at the rate referred to in *section 22* of the Courts Act 1981 where the amount is not paid by a date specified in the direction.
- (7) The Ombudsman shall give a copy of a decision under this section to—
- (a) the complainant, and
  - (b) the financial service provider to which the complaint relates.
- (8) Where a decision under this section contains a direction under *subsection (4)*, the financial service provider concerned—

- (a) shall comply with the direction within such period as is specified in the direction, or within such extended period as the Ombudsman allows, and
- (b) shall, not later than 14 days after the end of that period or extended period referred to in *paragraph (a)*, notify in writing the Ombudsman of action taken or proposed to be taken in consequence of the direction.

**Annotations****Amendments:**

- F8** Inserted (1.09.2020) by *Consumer Insurance Contracts Act 2019* (53/2019), s. 4, S.I. No. 328 of 2020.

**Complaints and redress: pension providers**

- 61.** (1) On completing an investigation of a complaint relating to a pension provider that has not been settled or withdrawn, the Ombudsman shall make a decision in writing in relation to the complaint.
- (2) A decision under *subsection (1)* may contain such direction to the parties concerned as the Ombudsman considers necessary or expedient for the satisfaction of the complaint or the resolution of the complaint.
- (3) Where the Ombudsman makes a direction under *subsection (2)* concerning a pension provider, such a direction shall not require either—
- (a) an amendment of the rules of a scheme or the conditions of a scheme, or
  - (b) the substitution of the decision of the Ombudsman for that of the pension provider in relation to the exercise by the pension provider of a discretionary power under the rules of the scheme.
- (4) Subject to *subsection (5)*, the Ombudsman may order such redress, including financial redress, for the complainant as he or she considers appropriate.
- (5) Any financial redress under *subsection (4)* shall be of such amount as the Ombudsman deems just and equitable having regard to all the circumstances and to this Part but shall not exceed any actual loss of benefit under the scheme concerned.
- (6) A decision under *subsection (1)* shall be communicated to the parties by the Ombudsman and such decision shall include the following:
- (a) the decision;
  - (b) the grounds for the decision;
  - (c) any direction given under *subsection (2)*.

**Decisions of Ombudsman**

- 62.** (1) Subject to the outcome of any appeal under *Part 7* against a decision of the Ombudsman under *section 61* or *62* in respect of a complaint, the decision is binding on any party to the complaint.
- (2) Subject to *subsection (3)* the Ombudsman shall publish decisions made by him or her after the establishment day in relation to complaints concerning financial service providers and case studies in relation to complaints concerning pension providers in such a manner that—

(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

F9[(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.]

(3) The Ombudsman may, if he or she considers it appropriate to do so in any particular case, publish, in such form and manner as he or she thinks fit, a report in relation to any investigation under this Part and the result of that investigation.

(4) For the purposes of the law of defamation, the publication by the Ombudsman of any report under *subsection (2) or (3)* shall be absolutely privileged, and immune from legal proceedings.

F10[(5) In this section, "Data Protection Regulation" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>53</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).]

#### Annotations

#### Amendments:

**F9** Substituted (25.05.2018) by *Data Protection Act 2018 (7/2018)*, s. 231(a), S.I. No. 174 of 2018.

**F10** Inserted (25.05.2018) by *Data Protection Act 2018 (7/2018)*, s. 231(a), S.I. No. 174 of 2018.

## PART 7

### APPEALS AND APPLICATIONS TO COURT

#### Definitions (*Part 7*)

**63.** In this Part—

“decision” means a decision of the Ombudsman under *section 60* or *61*;  
and

“direction” means a direction included in a decision.

#### Appeals

**64.** (1) A party to a complaint before the Ombudsman may appeal to the High Court against a decision or direction of the Ombudsman.

(2) An appeal under this section shall be made—

(a) not later than 35 days after the date of notification of the decision of the Ombudsman, or

(b) within such further period, as the court considers just and equitable in all the circumstances.

<sup>53</sup> OJ No. L 119, 4.5.2016, p.1

- (3) The orders that may be made by the High Court on the hearing of an appeal under this section include (but are not limited to) one or more of the following:
- (a) an order affirming the decision or direction of the Ombudsman, subject to such modifications as it considers appropriate;
  - (b) an order setting aside that decision or any direction included in it;
  - (c) an order remitting that decision or any such direction to the Ombudsman for review with its opinion on the matter;
  - (d) such other order in relation to the matter as it considers just in all the circumstances;
  - (e) such order as to costs as it thinks fit;
  - (f) an order amending the decision or direction of the Ombudsman, as the case may be.
- (4) The Ombudsman may be made a party to an appeal under this section.
- (5) Where the High Court makes an order remitting to the Ombudsman a decision or direction of the Ombudsman for review, the Ombudsman shall review the decision or direction in accordance with any directions of the court.
- (6) The decision of the High Court on the hearing of such an appeal is final, other than that a party to the appeal may apply to the Court of Appeal to review the decision on a question of law (but only with the leave of either of those courts, as appropriate).
- (7) A decision or direction of the Ombudsman does not take effect, and may not be implemented, while an appeal under *subsection (1)* or an application under *subsection (6)* is pending in relation to the decision or direction.

#### **Enforcement of Ombudsman decision**

- 65.** (1) Where a financial service provider or a pension provider fails or refuses to comply with a decision of the Ombudsman, within the period, or by the date, specified in the decision, the Circuit Court shall, on application to it on that behalf by—
- (a) the Ombudsman, as he or she sees fit, or
  - (b) the complainant in whose favour the decision was made,
- make an order.
- (2) In *subsection (1)*, the reference to a decision is a reference to such a decision in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned or determined by the court.
- (3) The Circuit Court may not hear an application for an order under this section other than where—
- (a) the financial service provider or the pension provider concerned appears at the hearing as respondent to the application, or
  - (b) the financial service provider or the pension provider concerned does not appear at the hearing, the court is satisfied that a copy of the application has been served on that financial service provider or pension provider.

- (4) The Circuit Court may not hear an application for an order under this section where the person that is the financial service provider or the pension provider, as the case may be, has appealed against the decision or direction and—
- (a) the decision or direction has not been affirmed (with or without modification), or
  - (b) that provider concerned has not withdrawn the appeal.
- (5) On hearing an application for an order under this section, the Circuit Court shall, if satisfied that the direction was one that the Ombudsman was empowered to make, make an order requiring the financial service provider or the pension provider concerned to comply with the direction within a period, or by a date, specified in the order.
- (6) Notwithstanding *subsection (1)*, where, in considering an application under that subsection, the Circuit Court is satisfied that, owing to lapse of time, it would not be possible to comply with an order under that subsection, the court shall make an order providing for such redress as it considers appropriate having regard to this Part and all the circumstances.
- (7) In an order under this section providing for the payment of financial redress by any person, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the person that is the financial service provider or the pension provider concerned to pay to the complainant concerned interest on the payment at the rate referred to in [section 22 of the Courts Act 1981](#) in respect of the whole or any part of the period beginning 4 weeks after the date on which the decision or direction concerned is communicated to the parties and ending on the date of the order.
- (8) An application to the Circuit Court under this section shall be made to the judge of the Circuit Court for the circuit—
- (a) in which the relevant complainant ordinarily resides, or
  - (b) the financial service provider or the pension provider, as the case may be, has its principal place of business in the State.

#### Questions of law to High Court

- 66.** (1) When dealing with a complaint, the Ombudsman may, on his or her own initiative or at the request of the complainant or the person that is the financial service provider or the pension provider concerned, refer for the opinion of the High Court a question of law arising in relation to the investigation or adjudication of the complaint.
- (2) The High Court has jurisdiction to hear and determine any question of law referred to it under this section.
- (3) Where a question of law in connection with the complaint concerned has been referred to the High Court under this section, the Ombudsman may not—
- (a) make a decision to which the question is relevant while the reference is pending, or
  - (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the High Court on the question.

**Appeal of Ombudsman decision**

67. Any appeal to the High Court of a decision taken by the Financial Services Ombudsman or the Pensions Ombudsman, as the case may be, that, immediately before the establishment day, named the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies shall, on and from that day, be read as a reference to the Office.

**Application to Circuit Court**

68. Any application to the Circuit Court that, immediately before the establishment day, named the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies shall, on and from that day, be read as an application by the Office.

**Application to District Court**

69. Any application to the District Court that, immediately before the establishment day, named the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies shall, on and from that day, be read as an application by the Office.

**Conviction**

70. Any appeal against a conviction that, immediately before the establishment day, named the Financial Services Ombudsman, the Pensions Ombudsman or any of the dissolved bodies shall, on and from that day, be read as a reference to the Office.

**Enforcement proceedings**

71. Any application for an enforcement order under section 141 of the Act of 1990 that, immediately before the establishment day, named the office of the Pensions Ombudsman, shall, on and from that day, be read as an application by the Office.

**Power of court to grant injunctions in certain cases**

72. (1) The High Court may, on an application made by the Ombudsman, grant an injunction restraining the conduct of a financial service provider or a pension provider which is engaging, or in which a financial service provider or a pension provider appears likely to engage, where the conduct is conduct that is being investigated or is proposed to be investigated or in relation to which a complaint has been received by the Ombudsman.

(2) In the case of a financial service provider, the High Court may not grant an application under *subsection (1)* unless of the opinion that the conduct sought to be restrained is likely to prejudice or negate the effect or implementation of a decision that the Ombudsman may make if the Ombudsman were to find the complaint to which the conduct relates is upheld, substantially upheld or partially upheld.

(3) The High Court may not require the Ombudsman to give any undertaking as to damages as a condition for the granting of an injunction in consequence of an application referred to in *subsection (1)*.

**PART 8**

## OTHER TRANSITIONAL PROVISIONS

**Saving of regulations made by former Council**

- 73.** (1) Any regulations (whether or not a statutory instrument to which the *Statutory Instruments Act 1947* primarily applies) made or issued by or on behalf of the Financial Services Ombudsman Council, made and in force immediately before the establishment day have, on and after that day, the same force and effect as they had prior to that day.
- (2) An instrument referred to in *subsection (1)* may be revoked or amended by the Minister as if made by the Minister.

**Financial Services Ombudsman's Bureau**

- 74.** Any function that, immediately before the establishment day, was vested in the Financial Services Ombudsman's Bureau shall on and from the establishment day be transferred to the Office.

## PART 9

## CONSEQUENTIAL AMENDMENTS

**Amendment of Central Bank Act 1942**

- 75.** The Act of 1942 is amended—

## (a) in section 2—

- (i) by deleting the definitions of “Financial Services Ombudsman” and “Deputy Financial Services Ombudsman”,

- (ii) by inserting after the definition of “*Currency Act 1927*” the following:

“ ‘Deputy Financial Services and Pensions Ombudsman’ means a person appointed under *section 8(1)(b)* of the *Financial Services and Pensions Ombudsman Act 2017* (No. \_\_\_\_ of 2017);”,

- (iii) by inserting after the definition of “financial futures and options exchange” the following:

“‘Financial Services and Pensions Ombudsman’ means a person appointed under *section 8(1)(a)* of the *Financial Services and Pensions Ombudsman Act 2017* (No. \_\_\_\_ of 2017);”,

and

- (iv) in the definition of “regulated financial service provider”—

- (I) in paragraph (bb), by substituting “enactment;” for “enactment, or”, and

- (II) by deleting paragraph (c),

- (b) in section 33AK(5)(ak), by substituting “Financial Services and Pensions Ombudsman” for “Financial Services Ombudsman”,

- (c) in section 61E(1) by substituting for paragraphs (ga) and (gb) the following:

“(gc) the Financial Services and Pensions Ombudsman”,



and

(d) in section 61H(4) by substituting for paragraph (b) the following:

“(b) the Financial Services and Pensions Ombudsman,”.

#### **Amendment of Freedom of Information Act 2014**

**76.** Part 1 of Schedule 1 to the **Freedom of Information Act 2014** is amended on the establishment day—

(a) by deleting paragraphs (ab) and (ae),

(b) by substituting “functions,” for “functions.” in paragraph (ai), and

(c) by inserting after paragraph (ai) the following:

“(aj) the Financial Services and Pensions Ombudsman, insofar as it relates to records concerning the mediation, investigation or adjudication of a complaint carried out by the Financial Services and Pensions Ombudsman under the *Financial Services and Pensions Ombudsman Act 2017* (No. \_\_\_\_ of 2017);”.

## **PART 10**

### **MISCELLANEOUS**

#### **Reciprocal arrangements with EEA countries**

**77.** (1) In this section—

“complaint” includes a complaint within the meaning of the EEA Memorandum of Understanding; and

“EEA Memorandum of Understanding” means the “Memorandum of Understanding on a Cross-border Out-of-Court Complaints Network for Financial Services” or, if the memorandum is amended or is replaced by another memorandum, means the memorandum as so amended or that other memorandum.

(2) References to the Financial Services Ombudsman in the EEA Memorandum of Understanding in respect of its subscription shall, with the approval of the Council, be read as references to the Ombudsman.

(3) The Ombudsman may refer a complaint, concerning a financial service provider, made to him or her to another EEA dispute settlement body in accordance with the terms of the EEA Memorandum of Understanding.

(4) The Ombudsman may mediate, investigate and adjudicate on any complaint, concerning a financial service provider, referred to him or her by another EEA dispute settlement body in accordance with the terms of the EEA Memorandum of Understanding.

## SCHEDULE 1

## REPEALS AND REVOCATIONS

*Section 5*

## PART 1

## ACTS OF THE OIREACHTAS

Reference	Number and year	Short title	Extent of repeal
(1)	(2)	(3)	(4)
1.	No. 22 of 1942	Central Bank Act 1942	Part VII
2.	No. 25 of 1990	Pensions Act 1990	Part XI
3.	No. 5 of 2006	Social Welfare Law Reform and Pensions Act 2006	Section 43
4.	No. 20 of 2013	Social Welfare and Pensions (Miscellaneous Provisions) Act 2013	Section 33

## PART 2

## STATUTORY INSTRUMENTS

Reference	Number and Year	Short title	Extent of revocation
(1)	(2)	(3)	(4)
1.	S.I. No. 119 of 2003	Pensions (Amendment) Act, 2002 (Section 5, in so far as that section inserts sections 126 to 130, 146 and 147 of Part XI into the Pensions Act 1990) (Commencement) Order 2003	The whole instrument
2.	S.I. No. 397 of 2003	Pensions Ombudsman Regulations 2003	The whole instrument
3.	S.I. No. 398 of 2003	Pensions (Amendment) Act 2002 (Section 5 (Except in so far as that section is already in operation) and sections 8 and 58) (Commencement) Order 2003	The whole instrument
4.	S.I. No. 399 of 2003	Social Welfare (Miscellaneous Provisions) Act 2003 (Section 23) (Commencement) Order 2003	The whole instrument
5.	S.I. No. 190 of 2005	Central Bank Act 1942 (Financial Services Ombudsman Council) Regulations 2005	The whole instrument

Reference (1)	Number and Year (2)	Short title (3)	Extent of revocation (4)
6.	S.I. No. 191 of 2005	Central Bank Act 1942 (Financial Services Ombudsman) Regulations 2005	The whole instrument
7.	S.I. No. 329 of 2005	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2005	The whole instrument
8.	S.I. No. 330 of 2005	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations (No. 2) 2005	The whole instrument
9.	S.I. No. 828 of 2005	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations (No. 3) 2005	The whole instrument
10.	S.I. No. 302 of 2006	Pensions Ombudsman Regulations 2006	The whole instrument
11.	S.I. No. 182 of 2007	Trust RACs (Disclosure of Information) Regulations 2007	Paragraph 16 of Schedule B
12.	S.I. No. 183 of 2007	Pensions Ombudsman Regulations 2007	The whole instrument
13.	S.I. No. 726 of 2007	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2007	The whole instrument
14.	S.I. No. 576 of 2008	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2008	The whole instrument
15.	S.I. No. 500 of 2009	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2009	The whole instrument
16.	S.I. No. 446 of 2010	Circuit Court Rules (Pensions Ombudsman) 2010	The whole instrument
17.	S.I. No. 576 of 2010	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2010	The whole instrument
18.	S.I. No. 674 of 2011	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2011	The whole instrument

Reference (1)	Number and Year (2)	Short title (3)	Extent of revocation (4)
19.	S.I. No. 506 of 2012	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2012	The whole instrument
20.	S.I. No. 477 of 2013	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2013	The whole instrument
21.	S.I. No. 97 of 2014	Central Bank Act 1942 (Financial Services Ombudsman Council) Complaint Information Regulations 2014	The whole instrument
22.	S.I. No. 137 of 2014	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees (Amendment) Regulations 2014	The whole instrument
23.	S.I. No. 164 of 2014	Central Bank Act 1942 (Financial Services Ombudsman Council) (Amendment) Regulations 2014	The whole instrument
24.	S.I. No. 42 of 2015	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2015	The whole instrument
25.	S.I. No. 592 of 2015	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2016	The whole instrument
26.	S.I. No. 54 of 2017	Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2017	The whole instrument

## SCHEDULE 2

## FINANCIAL SERVICES AND PENSIONS OMBUDSMAN COUNCIL

*Section 37*

1. The Ombudsman shall, at the request of the chairperson of the Council, designate a member of the staff of the Ombudsman to be secretary to the Council.

2. There may be paid to a member of the Council such fees and allowances for expenses (if any) as may be determined by the Minister in consultation with the Minister for Public Expenditure and Reform.
3. A person ceases to be a member of the Council if the person—
  - (a) dies,
  - (b) completes a term of office and is not reappointed,
  - (c) resigns the office by notice in writing to the Minister in accordance with *paragraph 11*,
  - (d) has, without the permission of the other members, been absent from meetings of the Council for a consecutive period of 6 months,
  - (e) is, with the person's consent, nominated as a candidate for election as a member of either House of the Oireachtas,
  - (f) is, with the person's consent, nominated as a candidate for election as a member of the European Parliament or to fill a vacancy in the membership of that Parliament,
  - (g) is, with the person's consent, nominated as a candidate for election as a member of a local authority,
  - (h) is adjudged bankrupt (either in the State or elsewhere) or enters into a composition with the person's creditors,
  - (i) becomes physically or mentally incapable of performing the duties of a member,
  - (j) is convicted of an offence (either in the State or elsewhere) and sentenced to serve a term of imprisonment for the offence, or
  - (k) is removed from office by the Minister—
    - (i) for proven misconduct or incompetence, or
    - (ii) in order to enable the Council to function effectively.
4. If the office of a member becomes vacant, the Minister shall arrange for a suitably qualified person to be appointed to fill the vacancy in accordance with this Schedule as soon as possible after the date on which the vacancy occurred.
5. The Council may act notwithstanding one or more vacancies among its members.
6. At a meeting of the Council—
  - (a) the chairperson of the Council shall, if present, be the chairperson of the meeting, or
  - (b) if and so long as the chairperson of the Council is not present or if that office is vacant, the other members of the Council who are present shall choose one of their number to be chairperson of the meeting.
7. Every question at a meeting of the Council shall be determined by a majority of the votes of the members of the Council present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

8. The quorum for a meeting of the Council shall, unless the Minister otherwise directs, be 4.
9. The Council may, if it thinks fit, transact any of its business by the circulation of papers, electronically or otherwise, among all its members for the time being and in such cases a resolution approved in writing by a majority of those members shall be taken to be a decision of the Council.
10. The Council may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time and such a meeting shall be referred to as an “electronic meeting”.
11. A member who participates in an electronic meeting is taken for all purposes to be present at the meeting.
12. A member of the Council may resign at any time his or her membership by a letter addressed to the Minister and the resignation shall take effect from the date specified in the letter (if any) or upon receipt by the Minister, whichever is the later.
13. Subject to this Schedule, the Council shall regulate its procedure by rules or otherwise.



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*Number 22 of 2017*

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## **FINANCIAL SERVICES AND PENSIONS OMBUDSMAN ACT 2017**

### **REVISED**

**Updated to 30 September 2024**

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#### **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 cited collectively 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](http://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 1972, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

#### **Acts which affect or previously affected this revision**

- *Automatic Enrolment Retirement Savings System Act 2024* (20/2024)
- *Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022* (5/2022)
- *Consumer Insurance Contracts Act 2019* (53/2019)
- *Markets in Financial Instruments Act 2018* (25/2018)

- *Data Protection Act 2018 (7/2018)*

All Acts up to and including *Criminal Justice (Amendment) Act 2024 (31/2024)*, enacted 4 October 2024, were considered in the preparation of this revision.

#### **Statutory instruments which affect or previously affected this revision**

- *Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2024 (S.I. No. 99 of 2024)*
- *Financial Services And Pensions Ombudsman Act 2017 [Financial Services And Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2023 (S.I. No. 6 of 2023)*
- *Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2022 (S.I. No. 93 of 2022)*
- *Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2021 (S.I. No. 117 of 2021)*
- *Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2021 (S.I. No. 117 of 2021)*
- *Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2020 (S.I. No. 89 of 2020)*
- *European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2020 (S.I. No. 14 of 2020)*
- *European Union (Cooperation Between National Authorities Responsible for the Enforcement of Consumer Protection Laws) Regulations 2019 (S.I. No. 691 of 2019)*
- *Financial Services And Pensions Ombudsman Act 2017 (Financial Services And Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2019 (S.I. No. 201 of 2019)*
- *Financial Services and Pensions Ombudsman Act 2017 (Financial Services and Pensions Ombudsman Council) Financial Services Industry Levy Regulations 2018 (S.I. No. 214 of 2018)*
- *Financial Services and Pensions Ombudsman (Compensation) Regulations 2018 (S.I. No. 154 of 2018)*
- *Financial Services and Pensions Ombudsman Act 2017 (Establishment Day) Order 2017 (S.I. No. 525 of 2017)*
- *Financial Services and Pensions Ombudsman Act 2017 (Commencement) Order 2017 (S.I. No. 524 of 2017)*

All statutory instruments up to and including *Automatic Enrolment Retirement Savings System Act 2024 (Commencement) Order 2024 (S.I. No. 500 of 2024)*, made 30 September 2024, were considered in the preparation of this revision.