



Ombudsman (Amendment) Bill 2008

In 2001 a Bill was introduced into the Dail to provide for the appointment of a dedicated Health Ombudsman but this Bill subsequently lapsed. In July 2008 the Ombudsman (Amendment) Bill 2008 (the Bill) was published. It will amend the Ombudsman Act 1980 (the 1980 Act) which established the Office of the Ombudsman and gave the Ombudsman the power to investigate complaints about administrative actions of many public bodies which adversely affect individuals or companies.

Current powers

Currently the Ombudsman examines complaints about the administrative actions of Government departments, the Health Service Executive (HSE), local authorities and An Post. A typical example of what people may complain about is a dispute about the medical card scheme administered by the HSE.

When the Ombudsman for Children was set up in 2002 to investigate complaints in relation to the actions of certain public bodies which may have adversely affected children, the 1980 Act was amended so that the Ombudsman cannot investigate matters that relate to actions affecting children.

Since July 2005, the Ombudsman has power to investigate complaints about compliance by public bodies with the Disability Act 2005. Among other things, this Act requires public bodies to ensure that public buildings and services are accessible by disabled people. Specifically the Ombudsman may investigate complaints relating to determinations by inquiry officers and decisions of complaints officers in relation to sectoral plans.

Investigations

The Ombudsman can investigate a complaint after carrying out a preliminary examination if that the action has adversely affected the complainant and the action was:

- Taken without proper authority;
- Taken on irrelevant grounds;
- The result of negligence or carelessness;
- Based on incorrect or incomplete information;
- Improperly discriminatory;
- Based on an undesirable administrative practice; or
- Otherwise contrary to fair or sound administration.

Investigations are always in private although the investigation procedure is a matter for the Ombudsman to decide. The Ombudsman may require any person with relevant information to furnish that information or meet with them.

The Ombudsman cannot investigate certain cases. For example, where the matter is before the courts; where the complainant has a right of appeal to the courts or an independent appeal body; or where the matter relates to recruitment or terms of employment. The Ombudsman may, after having carried out a preliminary examination, decide not to carry out an investigation or discontinue an investigation if:

1. The complaint is trivial or vexatious;
2. The person making the complaint has an insufficient interest in the matter; or
3. The person making the complaint has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if he has, has not been refused redress.

The Ombudsman can make recommendations that the actions be further considered; that measures are taken to mitigate or alter their effects; or that reasons for taking them are furnished. Before the Ombudsman makes an adverse finding against a person or body she must allow that person or body time to consider the issue and make representations. The Ombudsman's findings are not binding and the complainant must be informed of the result of the investigation and how the relevant public body has responded to any recommendations made.



Extension of powers

The Bill will extend the powers of the Ombudsman to cover a significant number of new bodies which, at present, are outside the remit of the Ombudsman and updates certain provisions of the 1980 Act. This includes bodies set up in recent years whose functions were formerly carried out by bodies (usually Government departments) that were within the Ombudsman's remit. This means that the administrative actions of many public bodies, that were previously not subject to investigation by the Ombudsman, will now be subject to scrutiny.

Some examples of new bodies being brought within the remit of the Ombudsman are:

- Vocational Educational Committees.
- Higher Education Institutes.
- The Courts Service.
- Dublin Docklands Development Authority.
- FÁS.
- The National Roads Authority.
- Dublin Transportation Office.
- The National Treatment Purchase Fund.
- The Irish Blood Transfusion Service Board.
- The Food Safety Authority of Ireland.
- The Health Information and Quality Authority.
- The National Cancer Screening Services Board.
- Many other State bodies whose activities affect the daily lives of citizens.

Other changes

The Bill also sets out further criteria and procedures which are to apply to bodies covered by the legislation and increases the powers of the Ombudsman in respect of access to information.

In this regard, it:

- Provides that in making decisions on rights, benefits and so on, a public body covered by the Ombudsman must, consistent with its resources, deal with people fairly and in a timely manner.
- Sets out the criteria under which the Government can, after consultation with the Ombudsman, by an order which must be approved by both Houses of the Oireachtas, bring new bodies within the remit of the Ombudsman.
- Allows the Ombudsman to make a general recommendation, where relevant, to any of the bodies within the remit where, following an investigation, it is considered appropriate to do so.
- Provides that where the requirement to provide information to the Ombudsman is not met the Ombudsman can institute legal proceedings.
- Provides that the Ombudsman may refer any question of law arising in an examination or an investigation to the High Court.
- Increases transparency by bringing the Act in line with the Freedom of Information Act 1997.
- Provides protection for the title of Ombudsman.

As a result of the above the applicable bodies need to ensure that they follow proper procedures and are aware of the fact that the Ombudsman will have more extensive powers in future, particularly in relation to accessing information that is relevant to a complaint.

Head of Public & Regulatory Unit

Niall O'Brien, Partner n.o'brien@beauchamps.ie

Beauchamps Solicitors Riverside Two, 43-49 Sir John Rogerson's Quay, Dublin 2

Tel +353 (1) 418 0600 Fax +353 (1) 418 0699
Email securemail@beauchamps.ie Web www.beauchamps.ie