



Number 38 of 2012

OMBUDSMAN (AMENDMENT) ACT 2012

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Definition.
3. Amendment of section 1 (definitions) of Principal Act.
4. Reviewable agency.
5. Amendment of section 2 (appointment and term of office of the Ombudsman) of Principal Act.
6. Amendment of section 4 (functions of the Ombudsman) of Principal Act.
7. Duty on reviewable agencies to give assistance and guidance, etc.
8. Amendment of section 5 (exclusions) of Principal Act.
9. Amendment of section 6 (reports, etc., by the Ombudsman) of Principal Act.
10. Amendment of section 7 (powers of Ombudsman in respect of examinations and investigations) of Principal Act.
11. Amendment of section 8 (conduct of investigations) of Principal Act.
12. Reference of questions of law to High Court.
13. Amendment of section 9 (secrecy of information) of Principal Act.
14. Amendment of section 10 (staff of the Ombudsman) of Principal Act.
15. Use of title of ombudsman.
16. Substitution of Schedules.

PART 2

OFFICE OF THE COMMISSION FOR PUBLIC SERVICE APPOINTMENTS

17. Definition (*Part 2*).
18. Amendment of section 28 (Director) of Act of 2004.
19. Amendment of section 29 (Accounting officer and accounts, etc.) of Act of 2004.
20. Staff of Office of Commission.

PART 3

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

21. Amendment of section 50 of British-Irish Agreement Act 1999.
22. Amendment of Ombudsman for Children Act 2002.
23. Amendment of section 36 of Official Languages Act 2003.
24. Amendment of section 28 of Commission to Inquire into Child Abuse (Amendment) Act 2005.
25. Amendment of section 40 of Disability Act 2005.

SCHEDULE

PART 1

SCHEDULE REPLACING FIRST SCHEDULE TO PRINCIPAL ACT

PART 2

SCHEDULE REPLACING SECOND SCHEDULE TO PRINCIPAL ACT

ACTS REFERRED TO

Adoption Act 2010	2010, No. 21
British-Irish Agreement Act 1999	1999, No. 1
Commission to Inquire into Child Abuse (Amendment) Act 2005	2005, No. 17
Companies Acts	
Comptroller and Auditor General (Amendment) Act 1993	1993, No. 8
Coroners Act 1962	1962, No. 9
Courts Service Act 1998	1998, No. 8
Dentists Act 1985	1985, No. 9
Disability Act 2005	2005, No. 14
Exchequer and Audit Departments Acts 1866 and 1921	
Freedom of Information Act 1997	1997, No. 13
Health and Social Care Professionals Act 2005	2005, No. 27
Local Government Act 1941	1941, No. 23
Local Government Act 2001	2001, No. 37
Medical Practitioners Act 2007	2007, No. 25
National Lottery Act 1986	1986, No. 28
Nurses Act 1985	1985, No. 18
Official Languages Act 2003	2003, No. 32
Ombudsman Act 1980	1980, No. 26
Ombudsman Acts 1980 to 1984	
Ombudsman for Children Act 2002	2002, No. 22
Opticians Acts 1956 and 2003	
Pensions Act 1990	1990, No. 25
Personal Injuries Assessment Board Act 2003	2003, No. 46
Pharmacy Act 2007	2007, No. 20
Property Services (Regulation) Act 2011	2011, No. 40
Public Service Management (Recruitment and Appointments) Act 2004	2004, No. 33
Radiological Protection (Amendment) Act 2002	2002, No. 23
Residential Tenancies Act 2004	2004, No. 27
Safety, Health and Welfare at Work Act 2005	2005, No. 10
Social Welfare Consolidation Act 2005	2005, No. 26
Veterinary Practice Act 2005	2005, No. 22



Number 38 of 2012

OMBUDSMAN (AMENDMENT) ACT 2012

AN ACT TO AMEND THE OMBUDSMAN ACT 1980, TO AMEND THE PUBLIC SERVICE MANAGEMENT (RECRUITMENT AND APPOINTMENTS) ACT 2004 SO AS TO ENABLE FUNCTIONS RELATING TO THE OFFICE OF THE COMMISSION FOR PUBLIC SERVICE APPOINTMENTS AND TO THE DIRECTOR OF THAT OFFICE TO BE CARRIED OUT BY, RESPECTIVELY, THE OFFICE OF THE OMBUDSMAN AND BY THE OFFICER OF THE LAST-MENTIONED OFFICE WHO PERFORMS THE FUNCTIONS OF CHIEF EXECUTIVE OFFICER OF THAT OFFICE, TO PROVIDE FOR THE CONSEQUENTIAL AMENDMENT OF CERTAIN OTHER ACTS AND TO PROVIDE FOR CONNECTED MATTERS.

[31st October, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Ombudsman (Amendment) Act 2012. Short title and commencement.

(2) The Ombudsman Acts 1980 to 1984 and this Act may be cited together as Ombudsman Acts 1980 to 2012.

(3) This Act shall come into operation on enactment save in respect of entities that were not reviewable agencies under the Principal Act immediately prior to the enactment of this Act. With respect to such entities, this Act shall come into operation 6 months from the date of such enactment or such earlier date (if any) as the Minister may by order specify.

2.—In this Act “Principal Act” means the Ombudsman Act 1980. Definition.

3.—Section 1 of the Principal Act is amended— Amendment of section 1 (definitions) of Principal Act.

(a) in subsection (1)—

(i) by inserting the following definitions after the definition of “civil servant”:

“ ‘eligible person’ means—

- (a) a person other than a reviewable agency or an exempt agency, and
- (b) a person (being an individual who constitutes, or is a member, officer, employee or agent of, a reviewable agency or an exempt agency) in that person’s private capacity;

‘entity’ means a person, body of persons, organisation or group, including, in particular, an organ of government, or an element of an organ of government, at national or local level;

‘exempt agency’ means—

- (a) an entity specified in the Second Schedule,
- (b) an element of a reviewable agency that is excluded from review by—
 - (i) Part II of the First Schedule, or
 - (ii) an order under section 1A or 4(10);”.
- (ii) in the definition of “local authority”, by deleting “Local Government Act, 1941” and substituting “Local Government Act 2001”, and
- (iii) by substituting the following definitions for the definition of “the Minister”:

“ ‘Minister’ means the Minister for Public Expenditure and Reform;

‘reviewable agency’ means—

- (a) an entity (whether established before or after the enactment of the *Ombudsman (Amendment) Act 2012*) within the meaning of Part I of the First Schedule, except to the extent that any element of that entity is expressed by Part II of that Schedule or an order under section 4(10) to be excluded from review, and
 - (b) an entity declared by an order under section 1A to be a reviewable agency, except to the extent that any element of that entity is expressed by that order to be excluded.”.
- (b) in subsection (3)—
- (i) by substituting “an entity (other than a Department of State) that is a reviewable agency or an exempt agency” for “a person (other than a Department of State) specified in the Schedules to this Act”, and

- (ii) by substituting “the entity” for “the person” in each place where it occurs.

4.—The Principal Act is amended by inserting the following Reviewable agency.
section after section 1:

“1A.—(1) Subject to subsections (2) and (3), the Minister may, after consultation with the Ombudsman, the Ombudsman for Children and such committee of the Houses of the Oireachtas as he or she considers appropriate, and with the consent of such other Minister (if any) as appears to the Minister to be responsible for the entity in question, and having regard to the need to ensure appropriate accountability and oversight of entities referred to in this subsection, may by order declare to be a reviewable agency—

- (a) an entity, being—
 - (i) a company established under the Companies Acts in pursuance of powers conferred by or under another enactment, or
 - (ii) any other entity, whether financed wholly or partly, or directly or indirectly, by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government,
- (b) any other entity on which functions in relation to the general public or a class of the general public stand conferred by any enactment (but only in respect of those functions),
- (c) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (a)(i) relates, or
- (d) an entity (other than a subsidiary to which paragraph (c) relates) that is directly or indirectly controlled by an entity to which paragraph (a)(ii) or (b) relates.

(2) An order made under subsection (1) may exclude certain elements of that entity from review.

(3) Where an order is proposed to be made under subsection (1) and such order excludes certain elements of an entity from review, the proposed order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.”.

5.—Section 2 of the Principal Act is amended—

- (a) by inserting after subsection (2) the following:

“(2A) Such appointment may be preceded by consideration by a committee of the Houses of the Oireachtas as may be designated by the Minister of a person proposed by the Government for such appointment.”,

and

Amendment of section 2 (appointment and term of office of Ombudsman) of Principal Act.

- (b) in paragraphs (a) and (b) of subsection (5), by substituting “European Parliament” for “European Assembly” in each place where it occurs.

Amendment of section 4 (functions of the Ombudsman) of Principal Act.

6.—Section 4 of the Principal Act is amended—

- (a) by substituting the following subsections for subsections (2), (3) and (4):

“(2) Subject to this Act, the Ombudsman may investigate any action taken by or on behalf of a reviewable agency in the performance of administrative functions where, having carried out a preliminary examination of the matter, it appears to the Ombudsman—

- (a) that the action has or may have adversely affected an eligible person, and

- (b) that the action was or may have been—

(i) taken without proper authority,

(ii) taken on irrelevant grounds,

(iii) the result of negligence or carelessness,

(iv) based on erroneous or incomplete information,

(v) improperly discriminatory,

(vi) based on an undesirable administrative practice,

(vii) a failure to comply with section 4A, or

(viii) otherwise contrary to fair or sound administration.

(3) The Ombudsman shall not investigate an action unless—

- (a) a complaint in relation to the action has been made to the Ombudsman by or on behalf of an eligible person, or

- (b) it appears to the Ombudsman (on his or her own motion or on foot of a communication from a person who is not, in respect of the complaint, an eligible person or a person referred to in subsection (4A)), having regard to all the circumstances, that an investigation under this section into the action would be warranted.

(4) The Ombudsman shall not investigate an action taken by or on behalf of an exempt agency, or an action taken by or on behalf of a reviewable agency excluded from review under this Act.

(4A) The Ombudsman shall not investigate a complaint by or on behalf of an individual into any action of or on behalf of another person where—

(a) that action—

- (i) affects such individual by virtue of being a member, officer, employee or agent of an entity or entities, and
- (ii) relates to the performance by such individual, whether alone or with others, of his or her functions as a member, officer, employee or agent of such entity or entities,

and

(b) any such entity is financed wholly or partly, whether directly or indirectly, by means of moneys provided by, or loans made or guaranteed by, a Minister of the Government,

but the restriction by virtue of this subsection on the investigation of that action shall only be to the extent that it relates to the performance of such functions.”,

(b) in subsection (5) by deleting “or” at the end of paragraph (ii) and substituting the following paragraphs for paragraph (iii):

- “(iii) the person making the complaint has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, having done so, has not been refused redress, or
- (iv) satisfactory measures to remedy, mitigate or alter the adverse effect of the action on the person making the complaint have been, or are proposed to be, taken by the reviewable agency concerned.”,

and

(c) by substituting for subsections (9) and (10) the following:

“(9A) Without prejudice to section 6(7), the Minister may designate a committee of the Houses of the Oireachtas to receive periodic reports from the Ombudsman and make recommendations to the Ombudsman regarding the exercise of his or her functions under this Act.

(10) (a) The Minister, after consultation with the Ombudsman, the Ombudsman for Children and such committee of the Houses of the Oireachtas as he or she considers appropriate, and with the consent of such other Minister (if any) as appears to the Minister to have responsibility for that entity, and having regard to the public interest and the need to ensure a balance between—

- (i) appropriate accountability and oversight of entities subject to this Act, and
- (ii) the ability of those entities to conduct adequately their affairs,

may by order declare an entity—

- (I) to be an exempt agency (including an entity that immediately before the making of the order was a reviewable agency),
 - (II) specified in the Second Schedule to be a reviewable entity, or
 - (III) specified in Part II of the First Schedule to be a reviewable agency on the basis of different elements of that agency's functions to those specified in that Part.
- (b) An order made under paragraph (a) may specify the inclusion or exclusion of elements of an entity.
 - (c) Where an order is proposed to be made under paragraph (a), a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.
 - (d) The Minister shall consult such committee of the Houses of the Oireachtas as he or she considers appropriate prior to taking any action under paragraph (c).

(11) Where a dispute arises between an entity and the Ombudsman as to whether an entity is a reviewable agency, the question shall be submitted to the Minister whose determination shall be binding.”.

Duty on reviewable agencies to give assistance and guidance, etc.

7.—The Principal Act is amended by inserting the following section after section 4:

“4A.—(1) This section applies when an action taken by or on behalf of a reviewable agency (‘the agency’) in the performance of administrative functions affects—

- (a) a right, privilege or other benefit to which an eligible person is or may be entitled, or
- (b) an obligation, liability, penalty or other detriment to which an eligible person is or may be subject.

(2) The agency shall, consistent with the resources available to the agency—

- (a) give reasonable assistance and guidance to that person in any dealings of the person with the agency in relation to the action taken by the agency, having

particular regard to the needs of the person as a result of any disability,

- (b) ensure that the business of the person with the agency in relation to that action is dealt with properly, fairly, impartially and in a timely manner, and
- (c) provide information to the person on any rights of appeal or review in respect of that action and on the procedures for, and any time limits applying to, the exercise of those rights.”.

8.—Section 5 of the Principal Act is amended—

Amendment of section 5 (exclusions) of Principal Act.

- (a) by substituting the following subsections for subsections (1) and (2):

“(1) Subject to subsection (2), the Ombudsman shall not investigate any action taken by or on behalf of a person—

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

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

- (ii) the person affected by the action has a right, conferred by or under an enactment, of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court), or

- (iii) the person affected by the action has a right of appeal, reference or review to or before a person, other than a reviewable agency, who is independent in the performance of his or her functions in relation to the appeal, reference or review,

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

- (c) subject to subsection (2A), if the action relates to or affects—

- (i) recruitment or appointment to any office or employment, or

- (ii) the terms and conditions (including the terms and conditions upon and subject to which pensions, gratuities or other superannuation benefits are payable), being—

(I) the terms and conditions upon and subject to which a person holds any office or is employed in any capacity, or

(II) the terms and conditions of a contract for services,

(d) if—

(i) in a case where a complaint is made to the Ombudsman in relation to the action, the complaint is not made before the expiration of 12 months from the time of the action or the time when the person making the complaint became aware of the action, whichever is the later, or

(ii) in any other case, a period of 12 months has elapsed since the time of the action,

(e) if the action was taken before the date on which the reviewable agency concerned first became subject to review under this Act, or was taken on a date on which the reviewable agency concerned was otherwise not subject to review under this Act,

(f) if the action is one to which section 8 of the Ombudsman for Children Act 2002 applies,

(g) if the action—

(i) falls within a category of complaint or dispute to which paragraph (a), (b) or (c) of subsection (2) of section 131 of the Pensions Act 1990 applies, and

(ii) is not excluded from the jurisdiction of the Pensions Ombudsman by virtue of regulations under paragraph (b) or (c) of subsection (7) of that section.

(2) Notwithstanding subsection (1), the Ombudsman—

(a) may investigate insurability and entitlement to benefit under the Social Welfare Consolidation Act 2005, and

(b) if it appears to the Ombudsman that special circumstances make it proper to do so, may investigate an action to which paragraph (a) or (d) of that subsection applies.

(2A) Subsection (1)(c) does not affect the power of the Ombudsman to investigate an action, taken within a reviewable agency having responsibility for the administration of laws relating to employment, that relates to a complaint made under such a law.”,

and

- (b) in subsection (3)(b) by substituting “a reviewable agency (other than a Department of State)” for “a person (other than a Department of State) mentioned in Part I of the First Schedule to this Act”.

9.—Section 6 of the Principal Act is amended by substituting the following subsections for subsections (2), (3) and (4):

Amendment of section 6 (reports, etc., by the Ombudsman) of Principal Act.

“(2) In any case where the Ombudsman conducts an investigation under this Act, the Ombudsman shall send a statement in writing of the results of the investigation to—

- (a) the reviewable agency concerned,
- (b) the Department of State in which are comprised the business and functions of, or which performs functions in relation to, a reviewable agency (other than a Department of State) to whom a statement is sent under paragraph (a),
- (c) any other person who has or, in a case where a complaint in relation to the action the subject of the investigation has been made to the Ombudsman, is alleged in the complaint to have taken or authorised the action, and
- (d) any other person to whom the Ombudsman considers it appropriate to send the statement.

(3) Where, following an investigation under this Act into an action, it appears to the Ombudsman that the action adversely affected an eligible person and was of a kind referred to in section 4(2)(b), the Ombudsman—

- (a) may recommend to the reviewable agency concerned—
 - (i) that the matter in relation to which the action was taken be further considered,
 - (ii) that measures or specified measures be taken to remedy, mitigate or alter the adverse affect of the action, or
 - (iii) that the reasons for taking the action be given to the Ombudsman,

and

- (b) may also request that reviewable agency to notify the Ombudsman within a specified time of the agency’s response to the recommendation.

(3A) Where the Ombudsman makes a recommendation to a reviewable agency under subsection (3)(a)(ii) in relation to an action of a particular kind, the Ombudsman—

- (a) may make a recommendation in general terms to such reviewable agencies as the Ombudsman considers appropriate with regard to remedying, mitigating or altering the adverse effect on eligible persons of

actions of that kind by any such reviewable agency,
and

- (b) may also request any such reviewable agency to notify him or her within a specified time of the response of that reviewable agency to the recommendation.

(4) Where the Ombudsman carries out an investigation under this Act into an action the subject of a complaint referred to in section 4(3)(a), the Ombudsman shall notify the person who made the complaint of—

- (a) the result of the investigation,
(b) the recommendation (if any) made under subsection (3)(a) in relation to the matter, and
(c) the response (if any) made to that recommendation by the reviewable agency concerned.”.

Amendment of section 7 (powers of Ombudsman in respect of examinations and investigations) of Principal Act.

10.—Section 7 of the Principal Act is amended in subsection (1)—

- (a) by inserting the following paragraph after paragraph (a):

“(aa) A requirement under paragraph (a) shall be made by notice in writing given to the person to whom it is directed and shall specify the period within which and the place at which any information, document or thing is to be furnished to the Ombudsman or the place at which a person is to attend before the Ombudsman.”,

and

- (b) by inserting the following paragraphs after paragraph (b):

“(c) If it appears to the Ombudsman that a person has failed to comply with a requirement under paragraph (a), the Ombudsman may apply to the Circuit Court for an order under paragraph (d).

(d) If, on an application under paragraph (c), the Circuit Court is satisfied as to the failure of the person concerned to comply with the requirement concerned, the Court may, subject to subsection (2), make an order directing that person to comply with the requirement.

(e) An application under paragraph (c) shall be made to the judge of the Circuit Court for the Dublin Circuit.”.

Amendment of section 8 (conduct of investigations) of Principal Act.

11.—Section 8 of the Principal Act is amended in subsection (2)(a) by substituting “reviewable agency concerned” for “Department of State, or other person specified in Part I of the First Schedule to this Act, concerned”.

12.—The Principal Act is amended by inserting the following section after section 8: Reference of questions of law to High Court.

“8A.—The Ombudsman may refer any question of law arising in an investigation under this Act to the High Court for determination.”.

13.—Section 9 of the Principal Act is amended in subsection (2)— Amendment of section 9 (secrecy of information) of Principal Act.

(a) in paragraphs (a) and (b)—

(i) by substituting “exempt record” for “document, information or thing” (wherever occurring),

(ii) by substituting “exempt records” for “documents, information or things” (wherever occurring),

(b) in paragraph (c) by substituting “exempt record” for “document, information or thing” (wherever occurring), and

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

“(d) In this subsection, ‘exempt record’ has the meaning given by section 2 of the Freedom of Information Act 1997.”.

14.—Section 10 of the Principal Act is amended by deleting subsection (4). Amendment of section 10 (staff of the Ombudsman) of Principal Act.

15.—The Principal Act is amended by inserting the following section after section 10: Use of title of ombudsman.

“10A.—(1) A person shall not, in connection with any trade, profession, business or occupation, use the title of ombudsman, either alone or in conjunction with another word or phrase, unless the person—

(a) is authorised to do so by or under an Act of the Oireachtas,

(b) has, by reason of the functions to be performed by him or her, obtained the prior consent in writing of the Minister to do so, or

(c) had commenced so to use that title before 9 July 2008.

(2) The Minister shall, for the purposes of deciding whether to give consent under subsection (1)(b), consult both—

(a) the Ombudsman, and

(b) such other Ministers of the Government as the Minister considers appropriate, having regard to the functions to be performed by the person who is seeking that consent.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not

exceeding €5,000 or imprisonment for a term not exceeding 6 months or both.”.

Substitution of Schedules.

16.—The Principal Act is amended by substituting, respectively, for the First and Second Schedules the Schedules set out in *Part 1* and *Part 2* of the *Schedule* to this Act.

PART 2

OFFICE OF THE COMMISSION FOR PUBLIC SERVICE APPOINTMENTS

Definition (*Part 2*).

17.—In this Part “Act of 2004” means the Public Service Management (Recruitment and Appointments) Act 2004.

Amendment of section 28 (Director) of Act of 2004.

18.—Section 28 of the Act of 2004 is amended by substituting the following for subsection (1):

“(1) Subject to subsection (2), the person who is designated by the Ombudsman as the chief executive officer (by whatever name called) of the Office of the Ombudsman shall be the Director of the Office of the Commission who shall be known and is referred to in this Act as the ‘Director’.”.

Amendment of section 29 (Accounting officer and accounts, etc.) of Act of 2004.

19.—The Act of 2004 is amended by substituting the following for section 29:

“29.—(1) For the purposes of the Exchequer and Audit Departments Acts 1866 and 1921 and the Comptroller and Auditor General (Amendment) Act 1993, the person who stands as the duly appointed accounting officer for the appropriation accounts of the Office of the Ombudsman shall also be the accounting officer for the appropriation accounts of the Office of the Commission.

(2) Nothing in subsection (1) shall be read so as to prevent the amalgamation of the appropriation accounts and vote of the Office of the Commission and the Office of the Ombudsman into one appropriation account and one vote.”.

Staff of Office of Commission.

20.—The Act of 2004 is amended by substituting the following for section 32(1):

“32.—(1) With effect from the commencement of the *Ombudsman (Amendment) Act 2012*, in so far as it relates to the Office of the Commission:

- (a) the members of the staff of the Office of the Commission upon such commencement shall become members of the staff of the Office of the Ombudsman,
- (b) subject to paragraph (c), such and so many officers and staff of the Ombudsman as may be designated from time to time by the Director for the purposes of staffing the Office of the Commission and any such designation may be revoked at any time,

- (c) the person who immediately before such commencement had been the Director shall cease to be the Director upon such commencement and—
 - (i) shall be deemed to be an officer of the Office of the Ombudsman designated to the Office of the Commission, and
 - (ii) such deemed designation shall not be revoked without his or her consent.”.

PART 3

CONSEQUENTIAL AMENDMENTS OF OTHER ACTS

21.—Section 50 of the British-Irish Agreement Act 1999 is amended by substituting “each of them were a reviewable agency (within the meaning of that Act),” for “there were a reference to each of them in Part I of the First Schedule to that Act,”.

Amendment of section 50 of British-Irish Agreement Act 1999.

22.—The Ombudsman for Children Act 2002 is amended—

Amendment of Ombudsman for Children Act 2002.

(a) in section 2—

(i) in subsection (1), by substituting for the definition of “public body” the following:

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

and

(ii) in subsection (6)(c), by deleting “other than in sections 14 to 16,”,

(b) in section 9(1)(c), by deleting “specified in Schedule 2”,

(c) by repealing section 10(7),

(d) in section 15, by substituting “reviewable agency (within the meaning of that Act) concerned” for “Department of State, or other person specified in Part 1 of the First Schedule to that Act, concerned”, and

(e) by repealing Schedules 1 and 2.

23.—Section 36 of the Official Languages Act 2003 is amended—

Amendment of section 36 of Official Languages Act 2003.

(a) in the Irish text by substituting “arna dhéanamh ag gníomhaireacht inathbhreithnithe (de réir bhrí an Achta sin) nó arna dhéanamh thar ceann gníomhaireachta den sórt sin” for “a rinne Roinn Stáit nó duine eile a shonraítear i gCuid 1 den Chéad Sceideal a ghabhann leis an Acht sin, nó a rinneadh thar a cheann nó thar a ceann”, and

- (b) in the English text by substituting “reviewable agency (within the meaning of that Act)” for “Department of State or other person specified in Part I of the First Schedule to that Act”.

Amendment of section 28 of Commission to Inquire into Child Abuse (Amendment) Act 2005.

24.—Section 28 of the Commission to Inquire into Child Abuse (Amendment) Act 2005 is amended in subsection (4)—

- (a) by substituting “reviewable agency (within the meaning of that Act)” for “Department of State”,
- (b) in paragraph (a) by substituting “ ‘in the performance’ ” for “ ‘(being an action taken in the performance of administrative functions)’ ”, and
- (c) in paragraph (c) by substituting “subsections (3) and (3A)” for “subsection (3)”.

Amendment of section 40 of Disability Act 2005.

25.—Section 40 of the Disability Act 2005 is amended—

- (a) by substituting “reviewable agency (within the meaning of that Act)” for “Department of State”,
- (b) in paragraph (b) by substituting “ ‘in the performance’ ” for “ ‘(being an action taken in the performance of administrative functions)’ ”, and
- (c) in paragraph (d) by substituting “subsections (3) and (3A)” for “subsection (3)”.

SCHEDULE

Section 16.

PART 1

SCHEDULE REPLACING FIRST SCHEDULE TO PRINCIPAL ACT

“FIRST SCHEDULE

REVIEWABLE AGENCIES

PART I

- (a) a Department of State;
- (b) an entity established by or under any enactment, statutory instrument or charter (other than the Companies Acts) or any scheme administered by a Minister of the Government;
- (c) a company (within the meaning of the Companies Acts) a majority of the shares in which are held by or on behalf of a Minister of the Government;
- (d) any entity (other than an entity to which paragraph (a) or (b) relates) established or appointed by the Government or a Minister of the Government;
- (e) a subsidiary (within the meaning of the Companies Acts) of a company to which paragraph (c) relates;
- (f) an entity (other than a subsidiary to which paragraph (e) relates) that is directly or indirectly controlled by an entity to which paragraph (b), (c), (d) or (e) relates;
- (g) an entity on which functions are conferred by or under statute, statutory instrument or charter, but only in respect of those functions;
- (h) a higher education institution in receipt of public funding;
- (i) an entity that immediately prior to the enactment of the *Ombudsman (Amendment) Act 2012* was subject to review by the Ombudsman.

PART II

Part I of this Schedule does not include a reference to—

- (a) the Adoption Authority of Ireland, insofar as it relates to the making of an adoption order or the recognition of an intercountry adoption effected outside the State, within the meaning of the Adoption Act 2010;
- (b) An Bord Altranais, except as it relates to an action taken in the performance of administrative functions

relating to the establishment and maintenance of a register of nurses under the Nurses Act 1985 and to its role as the competent authority for the purposes of mutual recognition of nursing qualifications obtained in or recognised by a Member State;

- (c) Bord na Radharcmhastóirí, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of a register of optometrists and dispensing opticians under the Opticians Acts 1956 and 2003 and to its role as competent authority for the purposes of the mutual recognition of relevant qualifications obtained in or recognised by a Member State;
- (d) the Courts Service, except as it relates to an action taken in the performance of administrative functions under section 5 of the Courts Service Act 1998;
- (e) the Dental Council, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of a register of dentists and dental practitioners under the Dentists Act 1985 and to its role as the competent authority for the purposes of mutual recognition of dental qualifications obtained in or recognised by a Member State;
- (f) the Department of Justice and Equality, insofar as it relates to an action—
 - (i) taken in the administration of the law relating to immigration or naturalisation,
 - (ii) taken in the administration of the prisons or other places for the custody of persons committed to custody by the Courts,
 - (iii) involving the exercise of the right or power referred to in Article 13.6 of the Constitution, or
 - (iv) involving the remission of any forfeiture or disqualification imposed by a court exercising criminal jurisdiction;
- (g) the Health and Safety Authority, except as it relates to an action taken in the performance of administrative functions under section 34 of the Safety, Health and Welfare at Work Act 2005;
- (h) the Health and Social Care Professionals Council, except as it relates to an action taken in the performance of administrative functions under Part 4 of the Health and Social Care Professionals Act 2005;
- (i) the Health Service Executive, insofar as it relates to an action taken—
 - (i) by persons when acting on behalf of the Health Service Executive and (in the opinion of the Ombudsman) solely in the exercise of clinical

judgement in connection with the diagnosis of illness or the care or treatment of a patient, whether such opinion is formed by the person taking the action or by any other person; or

- (ii) an action taken by the Health Service Executive when acting on the advice of persons referred to in subparagraph (i), being actions of the Health Service Executive that, in the opinion of the Ombudsman, were taken solely on such advice;
- (j) the Legal Aid Board, insofar as it relates to the provision of legal services (advice or representation) by solicitors of the Legal Aid Board, or by private solicitors working under the auspices of the Legal Aid Board, to clients;
- (k) a local authority (within the meaning of the Local Government Act 2001), insofar as it relates to the performance of reserved functions within the meaning of that Act;
- (l) the Medical Council, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of a register of medical practitioners under the Medical Practitioners Act 2007 and to its role as the competent authority for the purposes of mutual recognition of medical qualifications obtained in or recognised by a Member State;
- (m) the Personal Injuries Assessment Board, except as it relates to an action taken in the performance of administrative functions under Part 3 of the Personal Injuries Assessment Board Act 2003;
- (n) the Pharmaceutical Society of Ireland, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of registers of pharmacists, pharmaceutical assistants and retail pharmacy businesses under the Pharmacy Act 2007 and to its role as the competent authority for the purposes of the mutual recognition of relevant qualifications obtained in or recognised by a Member State;
- (o) the Pre-Hospital Emergency Care Council, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of registers of pre-hospital emergency care practitioners under the Pre-Hospital Emergency Care Council (Establishment) Order 2000 (S.I. No. 109 of 2000) and to its role as the competent authority for the purposes of mutual recognition of relevant qualifications obtained in or recognised by a Member State;
- (p) the Private Residential Tenancies Board, except as it relates to an action taken in the performance of administrative functions under Part 7 of the Residential Tenancies Act 2004;

- (q) the Property Services Appeal Board, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of a register of licensed property service providers under the Property Services (Regulation) Act 2011 and to the specification of qualification and other requirements for property service providers under that Act;
- (r) the Property Services Regulatory Authority, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of a register of licensed property service providers under the Property Services (Regulation) Act 2011 and to its role relating to the specification of qualification and other requirements for property service providers under that Act;
- (s) the Radiological Protection Institute of Ireland, except as it relates to an action taken in the performance of administrative functions under section 7 of the Radiological Protection (Amendment) Act 2002;
- (t) the Veterinary Council of Ireland, except as it relates to an action taken in the performance of administrative functions relating to the establishment and maintenance of a register of veterinary practitioners and a register of veterinary nurses under the Veterinary Practice Act 2005 and to its role as the competent authority for the purposes of the mutual recognition of veterinary qualifications obtained in or recognised by a Member State.”.

PART 2

SCHEDULE REPLACING SECOND SCHEDULE TO PRINCIPAL ACT

“SECOND SCHEDULE

EXEMPT AGENCIES

1. Abbey Theatre
2. Aer Lingus
3. An Bord Pleanála
4. An Post
5. Army Pensions Board
6. Arramara Teoranta
7. Bantry Bay Harbour Commissioners
8. Bord Gais Éireann
9. Bord na gCon
10. Bord na Móna

11. Broadcasting Authority of Ireland
12. Bus Átha Cliath — Dublin Bus
13. Bus Éireann
14. Central Bank of Ireland
15. Coillte Teoranta
16. Coimisinéir Teanga
17. Commission for Aviation Regulation
18. Commission for Communications Regulation
19. Commission for Energy Regulation
20. Commission for Public Service Appointments
21. Commission to Inquire into Child Abuse
22. Commissioners of Irish Lights
23. Comptroller and Auditor General
24. Córas Iompair Éireann
25. Cork Airport Authority plc.
26. Coroners appointed under the Coroners Act 1962
27. Criminal Assets Bureau
28. Data Protection Commissioner
29. Defence Forces
30. Director of Public Prosecutions
31. Drogheda Port Company
32. Dublin Airport Authority plc.
33. Dublin Port Company
34. Dun Laoghaire Harbour Company
35. EirGrid plc.
36. Electricity Supply Board
37. Employment Appeals Tribunal
38. Environmental Protection Agency
39. Equality Tribunal
40. Financial Services Ombudsman
41. Galway Harbour Company
42. Garda Síochána Inspectorate

43. Garda Síochána
44. Garda Síochána Ombudsman Commission
45. Health Insurance Authority
46. Horse Racing Ireland
47. Housing Finance Agency plc.
48. Human Rights Commission
49. Iarnród Éireann — Irish Rail
50. Irish Auditing and Accounting Supervisory Authority
51. Irish Aviation Authority
52. Irish Bank Resolution Corporation Limited
53. Irish Film Board
54. Irish Financial Services Appeals Tribunal
55. Irish National Petroleum Corporation Limited
56. Irish National Stud Company Limited
57. Judge Advocate-General
58. Judicial Appointments Advisory Board
59. Judicial Studies Institute
60. Labour Court
61. Labour Relations Commission
62. Law Reform Commission
63. Marine Casualty Investigation Board
64. Medical Bureau of Road Safety
65. Mental Health (Criminal Law) Review Board
66. Mental Health Commission
67. Mining Board
68. National Advisory Committee on Drugs
69. National Asset Management Agency
70. National Concert Hall
71. National Development Finance Agency
72. National Disability Authority
73. National Economic and Social Development Office

74. National Lottery Company (within the meaning of the National Lottery Act 1986)
75. National Oil Reserves Agency
76. National Pensions Reserve Fund Commission
77. National Tourism Development Authority
78. National Treasury Management Agency
79. New Ross Port Company
80. Office of the Attorney General
81. Office of the Confidential Recipient
82. Office of the Director of Corporate Enforcement
83. Office of the Information Commissioner
84. Office of the Inspector of Prisons
85. Office of the Ombudsman
86. Office of the Ombudsman for Children
87. Office of the Ombudsman for the Defence Forces
88. Office of the President
89. Pensions Ombudsman
90. Poisons Council
91. Port of Cork Company
92. Port of Waterford Company
93. Private Security Authority
94. Private Security Appeal Board
95. Raidió Teilifís Éireann
96. Railway Procurement Agency
97. Referendum Commission
98. Refugee Appeals Tribunal
99. Refugee Applications Commissioner
100. Residential Institutions Redress Board
101. Rights Commissioners
102. Shannon Airport Authority plc.
103. Shannon Foynes Port Company
104. Social Welfare Tribunal

SCH.

[No. 38.] *Ombudsman (Amendment) Act 2012.* [2012.]

105. Standards in Public Office Commission

106. State Pathologist

107. Teilifís na Gaeilge

108. Valuation Tribunal

109. Voluntary Health Insurance Board

110. Wicklow Port Company”.