

## 附錄一 考察議題英文版

### **A. Questions raised by the Control Yuan delegation regarding Ombudsman for Children (OCO)**

Meeting time: 9.30am, Wednesday 7<sup>th</sup> August 2013

#### **Part 1: Organization**

1. Does the Children's Ombudsman have branches in different parts of Ireland? How many staff members does the office have in total? How many of them are doing with complaints and investigations?
2. How many complaints do you received a year? Do you think staff of compliant or investigation unit is enough to support normal operation? Do your investigators have internal sub-teams to work on tasks in different areas?
3. Does the Ombudsman Office work with relevant government agencies or other women or children's rights institutions/NGOs, for example, the Office of Ombudsman, NWCI? How do you interact with them? How do you deal with a case which overlaps the jurisdictions of other agencies/institutions?
4. Where does your Office get its funding from? What's the annual budget for the office? Is it enough to support operation? Does the office face any pressure from the Parliament in terms of budget or others?

#### **Part 2: Statutes and Legislations**

1. Are there any regulations specifically related to the protection of children among human rights or ombudsman statues and legislations of Ireland?
2. The Children's Ombudsman has endeavored to promote children's rights and welfare for a long period of time. Have your effort prompted the government to revise relevant laws or regulations in improving children's rights? Could you give us an example?

#### **Part 3: Project Execution Plan**

1. How many cases of OCO are related to children and juvenile respectively? What's the percentage of those cases?
2. The most serious problems facing children's rights protection in Taiwan are

child abuse and education, in particular sexual assault and domestic violence against children. Does your country face similar problems? What is the most serious one among them? What actions have you taken to reduce sexual assault and abuse against children? How effective are those actions?

3. What are the most common cases received and investigated by OCO, for example, sexual abuse, domestic violence, education and children's care?
4. What are the consequent managements and recommendations of children's cases after the investigations of Children's Ombudsman? Can the Ombudsman take any other compulsory actions except for making recommendations or advice?
5. Can you briefly introduce the care system for pre-school children of Ireland? What more need to be done?
6. The OCO has been very helpful in promoting children's welfare and rights since its establishment in 2002. In what area has there been the most improvement? What more needs to be done? What does the OCO need to work on most in the future?
7. Have you encountered any difficulties or setbacks when you try to promote children's rights and welfare? What are some of the most common ones? Do they come from social ambience in general (public mentality) or the public sector (the government, laws and regulations)?
8. Does the OCO holding relevant education programs (for instance, seminars/workshops) in promoting public awareness of children's rights, and CRC? If so, what kind of activities have you found to be more effective in terms of promotion?
9. Does the OCO adopt any action plans for protecting and promoting children's rights? What is the most celebrated one?

### **Part 4: Controlling and Monitoring Systems**

1. How does the OCO promote and supervise the implementation of international human rights treaties, for instance, CRC, CEDAW, CCPR or CESC? Does the OCO need to submit a country report to relevant UN Committees?
2. Has the OCO ever assisted the complainants in submitting children's complaints to any relevant UN Committee? Can the Children's Ombudsman coordinate with government agencies or private sectors on the complainant's behalf?

Could you provide any celebrated cases?

3. How do you follow up on the progress of the investigation? How do you respond to government agencies that refuse to act on your suggestions or simply ignore you?
4. Is there any privacy/secretcy restriction for the OCO on dealing with complaints or conducting investigations? How do you protect personal information/privacy while dealing with a complaint or investigation? What actions should be done for balancing the publicity of information and personal privacy?
5. Has the OCO ever conducted any systematic investigations into children's rights and welfare? Could you provide any celebrated cases? What's the most valuable result of the investigations?
6. Does the OCO publish any special reports/publications on children's rights? If so, can you provide us a copy of the report for reference?

### **B. Questions raised by the Control Yuan delegation regarding Ombudsman**

Meeting time: 10.30am, Thursday 8<sup>th</sup> August 2013

#### **Part 1: Organization**

1. Does the Ombudsman Office have branches in different parts of Ireland? How many staff members does the office have in total? How many of them are belong to the complaint and investigation team?
2. According to the information on your website, there are about 10,000 complaints received by the office a year. Do you think staff of the investigation team is enough to deal with the complaints? Do your investigators have internal sub-teams to work on tasks in different areas?
3. How does the Ombudsman Office work with the Office of Information Commission and Standards in Public Office Commission? How do you deal with a case which overlaps the jurisdictions of different offices?
4. Does the Ombudsman Office work with relevant government agencies or other women or children's rights institutions, for example, the Office of Ombudsman for Children, NWCi? How do you interact with them? How do you deal with a case which overlaps the jurisdictions of other agencies/institutions?

5. Where does the Ombudsman Office get its funding from? What's the annual budget for the office? Is it enough to support operation? Does the office face any pressure from the Parliament in terms of budget or others?

### **Part 2: Statutes and Legislations**

1. Are there any regulations specifically related to the protection of women or children among human rights or ombudsman statutes and legislations of Ireland?
2. What are the influences of the Disability Act on the role and work of the Ombudsman? Has your office made any adjustments in the implementation of the Act?
3. The Ombudsman Office has endeavored to promote women and children's rights for a long period of time. Have your effort prompted the government to revise relevant laws or regulations in improving women and children's rights? Could you give us an example?

### **Part 3: Project Execution Plan**

1. How many cases received by the Ombudsman office are related to women and children? What's the percentage of those cases?
2. The most serious problems facing women and children's rights protection in Taiwan are women abuse and child abuse, in particular sexual assault, sexual harassment and domestic violence. Does your country face similar problems? What is the most serious one among them? What actions have you taken to eliminate discriminations against women and reduce sexual assault and abuse on women and children? How effective are those actions?
3. What are the most common cases received and investigated by the Ombudsman office regarding women and children's rights, for example, sexual abuse, violence, employment, or raising children?
4. What are the consequent managements and recommendations of women and children's cases after the investigations of Ombudsman? Can the Ombudsman take any other compulsory actions except for making recommendations?
5. The Ombudsman Office has been very helpful in promoting women and children's rights since its establishment in 1980s. In what area has there been the most improvement? What more needs to be done?

6. Have you encountered any difficulties or setbacks when you try to promote women and children's rights? What are some of the most common ones? Do they come from social ambience in general (public mentality) or the public sector (the government, laws and regulations)?
7. Does the Ombudsman Office holding relevant education programs (for instance, seminars/workshops) in promoting public awareness of women and children's rights, or international human rights treaties? If so, what kind of activities have you found to be more effective in terms of promotion?
8. Does the Ombudsman Office adopt any action plans for protecting and promoting women or children's rights? What is the most celebrated one?

### **Part 4: Controlling and Monitoring Systems**

1. How does the Ombudsman Office promote and supervise the implementation of international human rights treaties, for instance, CEDAW, CRC, CCPR or CESC? Does the Ombudsman need to submit a country report to relevant UN Committees?
2. Has the Ombudsman Office ever assisted the complainants in submitting women or children's complaints to any relevant UN Committee? Can the Ombudsman coordinate with government agencies or private companies on the complainant's behalf? Could you provide any celebrated cases?
3. How do you follow up on the progress of the investigation? How do you respond to government agencies that refuse to act on your suggestions or simply ignore you?
4. Is there any privacy/secretcy restriction for the Ombudsman Office on dealing with complaints or conducting? How do you protect personal information while dealing with a complaint or investigation? What actions should be done for balancing the publicity of information and personal privacy?
5. Has the Ombudsman Office ever conducted any systematic investigations into women or children's rights? Could you provide any celebrated cases? What's the most valuable result of the investigations?
6. Does the Ombudsman Office publish any special reports/publications on women or children's rights? If so, can you provide us a copy of the report for reference?

### **Part 5: Interactions with Ombudsman**

1. We learned that Ombudsman Ms Emily O'Reilly has been elected as European Ombudsman in July. We would like, on behalf of the Control Yuan and Dr. Louis Chao, Chairperson of International Affairs Committee, to extend our sincere congratulations on her election. What's the relationship between Irish Ombudsman and European Ombudsman? In what circumstance the two offices may work together?
2. The Control Yuan has been participated in regional ombudsman activities/conferences for a long period of time, such as APOR and FIO. We are looking forward to the opportunity to interact with Ombudsman organizations in other regions. Is there any possibility for Control Yuan to attend European Ombudsman Conference as an observer?

### **C. Questions raised by the Control Yuan delegation regarding NWCI**

Meeting time: 3.00pm, Thursday 8<sup>th</sup> August 2013

#### **Part 1: Organization**

1. Is NWCI a non-governmental organization (NGO) or a governmental agency?
2. Does NWCI have regional branches? How many staff does NWCI have? Does NWCI have volunteer workers? Does NWCI have various sub-teams according to different areas?
3. There are more than 160 members (organizations, groups) of NWCI. Do your members assist in promoting the concept of NWCI or holding relevant seminars/workshops? If so, what kind of activities is more effective in terms of promotion?
4. Where does the finance of NWCI come from? Is it sponsored by the government budget? How many budget do NWCI have a year? Is it enough for office operation?

#### **Part 2: Project Execution Plan**

1. Ever since its establishment, what have the NWCI contributed to improving women's rights in Ireland? Which part had the greatest improvement among these contributions? Which part is needed to improve the most in the future?

## 附錄

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2. What kind of difficulties does your Council face more often when promoting women's rights? Does it come from governments, laws and regulations, or the society?
3. In Taiwan, the most serious problems of women's rights are sexual abuse, employment discrimination (especially against pregnant women), sexual assault, sexual harassment and domestic violence. Does your country face similar problems? What is the most serious one among them? What actions have you taken to effectively eliminate discriminations against women and reduce sexual assault and abuse?
4. NWCI has endeavored to promote women's rights for a long period. Have your suggestions urged the government to revise relevant laws or regulations in improving women's rights? Could you give us an example?
5. Does NWCI cooperate with related government agencies or other women/human rights institutions, for example, the Office of Ombudsman or the Office of Ombudsman for Children? How do you interact with them?
6. How does NWCI promote the implementation and supervision of international human rights treaties, for instance, CEDAW, CRC, CCPR or CESCRC? Does NWCI need to submit a shadow report/country report to relevant UN Committees?
7. Have NWCI ever helped the complainants in submitting complaints to government agencies, or any UN Committee? Can NWCI mediate with government agencies or private companies for complainants? Could you provide any celebrated cases?
8. Does NWCI adopt any action plans for protecting and promoting women's rights? What is the most celebrated one?

附錄二 監察職權與人權保障簡介 (簡報檔)



## Establishment

- **The Control Yuan (CY)** of the Republic of China (ROC) was organized in 1931 and formally established in 1948 following the enactment of the Constitution.
- CY is the supreme supervisory agency (**National Ombudsman Office**) in the country.

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## Organization

- *29 Members & 400 staff*
  - CY consists of 29 members (National Ombudsmen), including a President and a Vice President.
  - Each member is nominated and appointed by the President of ROC and confirmed by the Legislative Yuan (the Parliament) to serve a term of 6 years.
- *Within CY:* 32 units, including 4 Departments, 7 Standing Committees, 8 Special Committees, and other supporting units
- *Under CY:* Ministry of Audit (National Audit Office)

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## Main Theme

- CY is an Institutional Member of [International Ombudsman Institute \(IOI\)](#)
- Its main duties are to:
  - [Oversee government wrongdoings](#)
  - [Handle complaints and ensure good governance](#)
  - [Promote anti-corruption](#)
  - [Protect human rights](#)

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## Jurisdiction

- [CY has far-reaching oversight functions.](#)
- Its statutory powers include [overseeing government institutions and officials at all levels.](#)
- Its jurisdiction extends to [the judiciary, the police, the military and state-run businesses](#) but excludes the President, Vice President, legislators or locally elected legislatures.

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## Functions & Powers

1. Receive **complaints** from members of the public;
2. **Investigate** maladministration and make recommendations to the government for improvement;
3. **Impeach** civil servants who violate laws;
4. **Censure** incompetent or negligent government officials;
5. Propose **corrective measures** to government agencies;
6. Conduct **circuit supervisions and inspections**;

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## Functions & Powers (2)

7. Receive **assets report** filed by civil servants;
8. Deal with **conflict of interest** issues;
9. Deal with **political donations** issues;
10. Deal with **lobbying** issues;
11. Conduct **invigilation**; and
12. **Audit** government expenditure.

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## CY's Important Role in Protecting Human Rights

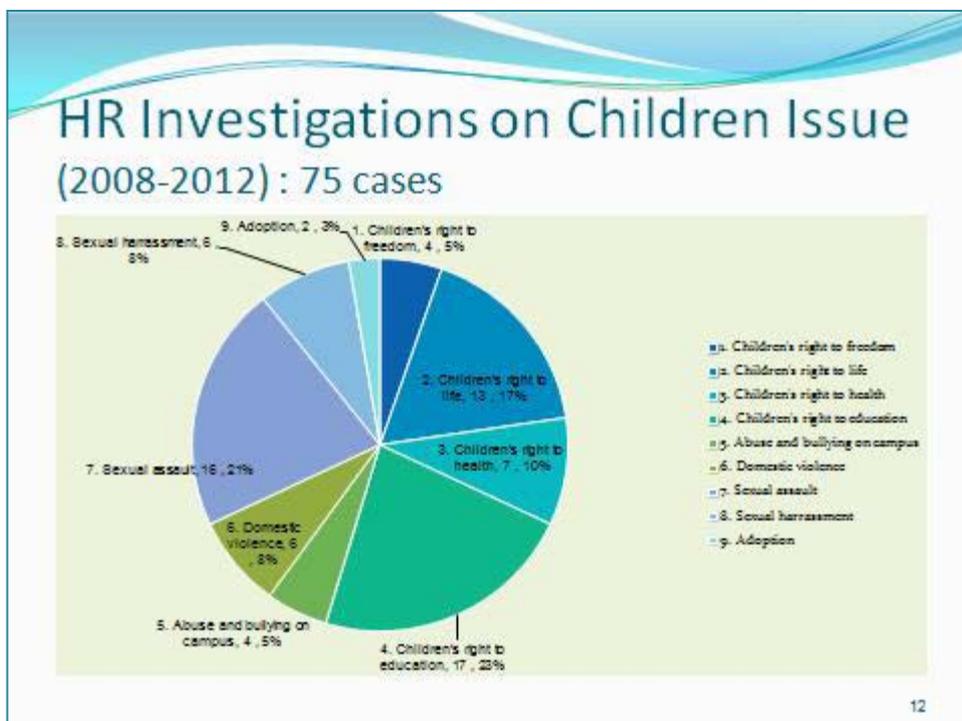
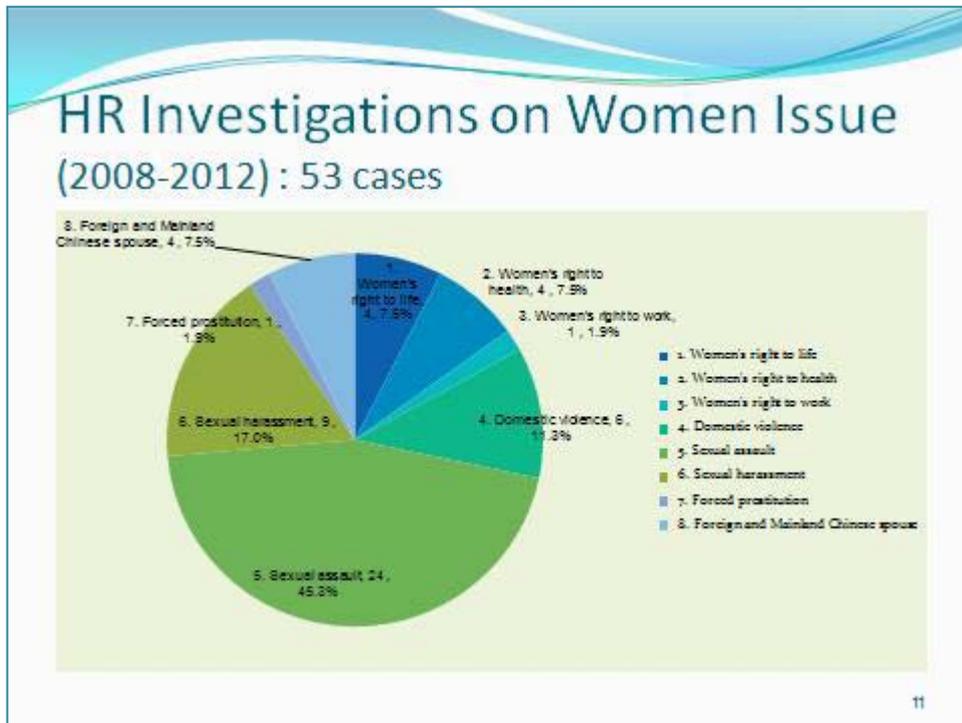
- So far Taiwan has not yet established a national human rights commission, and CY is not an institution fully in compliance with *Paris Principles*.
- CY set up “Human Rights Protection Committee” (HRPC) in 2000 to strengthen its function of protecting human rights.
- The CCPR & CESCR as well as CEDAW were ratified in 2009 and 2011 respectively.
- CY can use international human rights norms to oversee implementation by government agencies.

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## Workload & Statistics

Period	Complaints received	Cases investigated	Corrective measures proposed	Impeachment	Censure
2012 Total	19,722	436	161	27	2
HR cases	17,074	244	81	NA	NA
%	86.6%	56.0%	50.3%	NA	NA
Top 3 HR issues	1. Judicial protection 2. Property 3. Work	1. Property 2. Judicial protection 3. Health & life	1. Health & life 2. Property 3. Social securities	NA	NA

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## CY's Annual Reports on Human Rights Protection



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## Case Studies

- CASE 1  
Foreign caregivers' rights
- CASE 2  
Sexual assault on campus



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Thank you very much!

Delegates:

- **WANG Hui-Yuan**, Investigation Official, Department of Supervisory Investigation
- **TSAI Chih-Huei**, Administrative Assistant, Office of Deputy Secretary-General
- **CHENG Hui-Wen**, Administrative Assistant, Human rights Protection Committee

[Http://www.cy.gov.tw](http://www.cy.gov.tw)

### 附錄三 人權案例二則 (節錄自本院人權保障主題網)

#### Foreign caregivers' rights

*The past decades have seen a rise in the number of foreign labors in Taiwan as local workers avert dangerous and dirty jobs with poor working conditions. The introduction of foreign workers may have made up for deficiency in the labor force, but they have also been subject to a series of human rights violation that prompted the Control Yuan to launch a systemic investigation into the issue. (Case no. 1010800073)*

According to 2012 statistics, the number of foreign workers in Taiwan amounts to 430,000. As the population ages, the demand of senior caregivers has been rising by the year. At a third of the cost, coupled with 24-hour service provision, foreign workers have become the preferred option for local employers, making up the bulk of the staff at senior care centers. Around 187,000 foreign workers (44%) work in domestic settings a majority of which are Indonesian and work in senior care. The nature and location of their job make them prone to human rights violations that go unreported. The Control Yuan's investigation has found a series of human rights violations facing foreign caregivers in Taiwan who are often forced to:

1. Take on tasks beyond the scope of the contract.
2. Pay high service and placement fees and other miscellaneous fees that erode their salary.
3. Work excessively overtime without break.
4. Live in inadequate rooms.
5. Stay with the same employer even after disputes.
6. Stay at poorly equipped shelters or placement centers before deportation.
7. Sit in interrogations without adequate interpretation services.
8. Work without proper protections or complaint channel. Foreign domestic workers are often subject to sexual harassment, sexual assault or abuse, due to difficulties in seeking immediate help and gathering evidence in home settings. Lack of report system, legal aid and counseling has made the problems worse.

In response, the Council of Labor Affairs has improved the placement system and drafted "Domestic Worker Protection Act" to mandate eight hours of uninterrupted break every day under normal circumstances and at least one full day off every week. The Council has also established a report system to facilitate reporting of abuse and optimize division of labor. Provision 1 Article 19 of the Labor Union Act has been revised to allow workers above the age of twenty be eligible members of the council or board of supervisors of labor union. Foreign labors and domestic workers can now freely join a union relevant to their job or form a union on their own accord.

### Sexual Assault on Campus

*A school for the hearing impaired in Tainan has become a hotbed of sex crime. An investigation conducted by the Control Yuan in response to a complaint by the Humanistic Education Foundation found 164 alleged sex assault incidents occurring in a span of eight year's. A total of 16 persons have been impeached by the Control Yuan, among which are two former principals, ten administrative personnel and four directors at the Ministry of Education. (Case no. 1000800179)*

Founded in 1891, the Affiliated Hearing Impaired School of National University of Tainan initially provided education for the visually impaired. Beginning in 1968, the school became an institute dedicated to the hearing impaired. In 2002, the school expanded to provide vocational training at the secondary level and admitted students with mental disabilities. In 2004, it became a mixed school for both the hearing impaired and traditional students.

The Control Yuan's investigation has uncovered 164 alleged rape and harassment incidents that took in various locations, from the school bus, dormitory, campus to students' private homes. It has identified 90 perpetrators and 92 student victims, a majority of which have hearing disabilities. The school has been found to attempt to evade the problem by underreporting. Aside from the 68 confirmed rape and harassment cases, 44 incidents were never investigated or dealt with, 26 were determined as false, 10 lacked investigation results, and 7 lacked evidentiary support. Moreover, 17 of these cases failed to go through the standard investigation procedure as required by law. Among the 157 incidents on campus, 87 were not properly reported to the Ministry of Education (MOE): 30 cases unreported, 30 belatedly reported, 34 misreported as other types of violation.<sup>1</sup>

The school did nothing to improve campus safety, raise awareness of gender equality, and provide counseling, protection or other forms of help to victims and perpetrators alike. Staff from the MOE was also implicated for failing to supervise the school and detect problems. A total of 16 persons from the school and the MOE were impeached by the Control Yuan for serious negligence.

In response, the school has installed 155 surveillance cameras monitored by staff on-duty and 558 emergency buttons around campus. It has also introduced a 24-hour patrol system covering all school grounds, improved dorm safety and offered staff training to increase awareness of gender equality. The MOE has adopted new monitoring mechanism and train staff members in investigating sexual assault or harassment on campus.

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<sup>1</sup> 7 cases were counted more than once.

附錄四 愛爾蘭的兒童監察使法(Ombudsman for Children Act, 2002)  
全文



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*Number 22 of 2002*

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**OMBUDSMAN FOR CHILDREN ACT, 2002**

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ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Interpretation.
3. Expenses.

PART 2

OMBUDSMAN FOR CHILDREN

CHAPTER 1

*Appointment, terms and conditions of office*

4. Appointment and term of office.
5. Salary, allowances for expenses and superannuation.

CHAPTER 2

*Performance of functions*

6. Performance of functions.

CHAPTER 3

*Rights and welfare of children*

7. Function to promote rights and welfare of children.

## CHAPTER 4

### *Complaints against public bodies, schools and voluntary hospitals*

8. Function to examine and investigate complaints against public bodies.
9. Function to examine and investigate complaints against schools and voluntary hospitals.
10. Preliminary examination and investigation of complaints.
11. Exclusions.
12. Amendment of section 5 of Act of 1980.

## CHAPTER 5

### *Examination and investigation of complaints*

13. Reports, etc.
14. Powers in respect of preliminary examinations and investigations.
15. Conduct of investigations.
16. Secrecy of information.

## CHAPTER 6

### *Miscellaneous*

17. Accounts and audits.
18. Attendance before Public Accounts Committee.
19. Attendance before other committees of Houses of Oireachtas.
20. Amendment of Freedom of Information Act, 1997.
21. Staff.

## SCHEDULE 1

### PUBLIC BODIES SUBJECT TO INVESTIGATION

#### PART 1

#### PART 2

## SCHEDULE 2

### VOLUNTARY HOSPITALS

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## ACTS REFERRED TO

Adoption Acts, 1952 to 1998	
Children Act, 1908	1908, c. 67
Civil Service Commissioners Act, 1956	1956, No. 45
Civil Service Regulation Act, 1956	1956, No. 46
Civil Service Regulation Acts, 1956 to 1996	
Comptroller and Auditor General (Amendment) Act, 1993	1993, No. 8
County Management Acts, 1940 to 1994	
Court Officers Acts, 1926 to 1999	
Courts (Supplemental Provisions) Act, 1961	1961, No. 39
Defence Forces Acts, 1954 to 1998	
Education Act, 1998	1998, No. 51
European Parliament Elections Act, 1997	1997, No. 2
Freedom of Information Act, 1997	1997, No. 13
Garda Síochána (Complaints) Act, 1986	1986, No. 29
Guardianship of Children Acts, 1964 to 1997	
Health Act, 1970	1970, No. 1
Health Acts, 1947 to 2001	
Health (Eastern Regional Health Authority) Act, 1999	1999, No. 13
Income Tax Acts	
Interpretation Act, 1937	1937, No. 38
Local Government Act, 2001	2001, No. 37
Ombudsman Act, 1980	1980, No. 26
Social Welfare Acts	



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*Number 22 of 2002*

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**OMBUDSMAN FOR CHILDREN ACT, 2002**

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

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**PART 1**

**PRELIMINARY AND GENERAL**

*Short title and commencement*

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

(2) This Act shall come into operation on such day or days, not later than 2 years after the passing of this Act, as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

*Interpretation*

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

“Act of 1980” means Ombudsman Act, 1980;

“Act of 1998” means Education Act, 1998;

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

“action” includes decision, failure to act and omission;

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

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

“functions” includes powers and duties and a reference to the performance of functions includes, as respects powers and duties, a reference to the exercise of powers and the

carrying out of duties;

“health board” means—

- (a) a health board established under section 4 of the Health Act, 1970,
- (b) the Eastern Regional Health Authority, or
- (c) the Northern Area Health Board, the East Coast Area Health Board or the South-Western Area Health Board;

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

“Minister” means Minister for Health and Children;

“public body” shall be construed in accordance with *Schedule 1*;

“school” means a recognised school within the meaning of the Act of 1998;

“voluntary hospital” means—

- (a) a voluntary hospital within the meaning of the Act of 1999, or
- (b) a voluntary hospital specified in Schedule 2.

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

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

- (a) as respects the business and functions of the public body, references to the Department of State in which any of them are comprised and to the Minister of the Government having charge of that Department of State, and
- (b) as respects functions in relation to the public body performed by a Department of State, references to that Department of State and to the Minister of the Government having charge of it, and to officers of those Ministers of the Government and members, officers and staff of the public body and, if and so long as any of the functions of any of those Ministers of the Government stand delegated to a Minister of State at any Department of State, to such Minister of State at that Department of State.

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

teachers and other staff of the school.

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

(6) In this Act—

- (a) a reference to a section or Schedule is a reference to a section of, or a Schedule to, this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and
- (c) other than in *sections 14 to 16*, a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any other enactment (including this Act).

### *Expenses*

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

## PART 2

### OMBUDSMAN FOR CHILDREN

#### CHAPTER 1

##### *Appointment, terms and conditions of office*

##### *Appointment and term of office*

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

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

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

- (a) may at his or her own request be relieved of office by the President,

(b) may be removed from office by the President but shall not be removed from office except where—

- (i) he or she has become incapable through ill health of effectively performing the functions of the office,
- (ii) he or she is adjudicated bankrupt,
- (iii) he or she is convicted on indictment by a court of competent jurisdiction and sentenced to imprisonment,
- (iv) he or she has failed without reasonable excuse to discharge the functions of the office for a continuous period of 3 months beginning not earlier than 6 months before the day of removal, or
- (v) for any other stated reason, he or she should be removed, and then only upon resolution passed by Dáil Éireann and Seanad Éireann calling for his or her removal, Expenses.

(c) shall in any case vacate the office on attaining the age of 67 years.

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

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

- (i) nominated as a member of Seanad Éireann or elected as a member of either House of the Oireachtas,
- (ii) elected to be a representative in the European Parliament or is regarded pursuant to section 19 of the European Parliament Elections Act, 1997, as having been elected to that Parliament, or
- (iii) becomes a member of a local authority, he or she shall thereupon cease to hold the office of Ombudsman for Children.

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

- (i) entitled under the Standing Orders of either House of the Oireachtas to sit therein,
- (ii) a representative in the European Parliament, or
- (iii) entitled under the standing orders of a local authority to sit as a member thereof,

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

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

*Salary, allowances for expenses and superannuation*

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

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

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

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

(d) No superannuation benefit shall be granted by the Minister, nor shall any other arrangement be entered into by the Minister for the provision of such a benefit, to or in respect of persons who have held the office of Ombudsman for Children except in accordance with a scheme under this subsection or, if the Minister, with the consent of the Minister for Finance, sanctions the granting of such a benefit, in accordance with that sanction.

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

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

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

## CHAPTER 2

### *Performance of functions*

#### *Performance of functions*

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

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

## CHAPTER 3

### *Rights and welfare of children*

#### *Function to promote rights and welfare of children*

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

- (a) advise the Minister or any other Minister of the Government, as may be appropriate, on the development and co-ordination of policy relating to children,
- (b) encourage public bodies, schools and voluntary hospitals to develop policies, practices and procedures designed to promote the rights and welfare of children,
- (c) collect and disseminate information on matters relating to the rights and welfare of children,
- (d) promote awareness among members of the public (including children of such age or ages as he or she considers appropriate) of matters (including the principles and provisions of the Convention) relating to the rights and welfare of children and how those rights can be enforced,
- (e) highlight issues relating to the rights and welfare of children that are of concern to children,
- (f) exchange information and co-operate with the Ombudsman for Children (by whatever name called) of other states,
- (g) monitor and review generally the operation of legislation concerning matters

that relate to the rights and welfare of children, and

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

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

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

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

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

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

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

## CHAPTER 4

### *Complaints against public bodies, schools and voluntary hospitals*

#### *Function to examine and investigate complaints against public bodies*

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

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

(b) the action was or may have been—

(i) taken without proper authority,

(ii) taken on irrelevant grounds,

- (iii) the result of negligence or carelessness,
- (iv) based on erroneous or incomplete information,
- (v) improperly discriminatory,
- (vi) based on an undesirable administrative practice, or
- (vii) otherwise contrary to fair or sound administration.

### *Function to examine and investigate complaints against schools and voluntary hospitals*

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

- (a) a school in connection with the performance of its functions under section 9 of the Act of 1998,
- (b) a voluntary hospital within the meaning of the Act of 1999 in connection with the provision by it of services (within the meaning of that Act) in accordance with an arrangement made by it under section 10 of that Act with the Eastern Regional Health Authority or an Area Health Board, or
- (c) a voluntary hospital specified in *Schedule 2* in connection with the provision by it of services under the Health Acts, 1947 to 2001, for persons eligible for such services in accordance with an arrangement made by it under section 26 of the Health Act, 1970, with the health board within whose functional area it is situated, where, upon having carried out a preliminary examination of the matter, it appears to the Ombudsman for Children that—
  - (i) the action has or may have adversely affected a child, and
  - (ii) the action was or may have been—
    - (I) taken without proper authority,
    - (II) taken on irrelevant grounds,
    - (III) the result of negligence or carelessness,
    - (IV) based on erroneous or incomplete information,
    - (V) improperly discriminatory,
    - (VI) based on an undesirable administrative practice, or
    - (VII) otherwise contrary to fair or sound administration.

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

(3) The references to a voluntary hospital in *paragraphs (b) and (c) of subsection (1)*

do not include references to—

- (a) persons when acting on behalf of the voluntary hospital concerned and (in the opinion of the Ombudsman for Children) solely in the exercise of clinical judgement in connection with the diagnosis of illness or the care or treatment of a patient, whether formed by the person taking the action or by any other person, or
- (b) the voluntary hospital concerned when acting on the advice of persons acting as aforesaid, being actions of the voluntary hospital that, in the opinion of the Ombudsman for Children, were taken solely on such advice.

(4) In this section “an Area Health Board” means the Northern Area Health Board, the East Coast Area Health Board or the South- Western Area Health Board.

### *Preliminary examination and investigation of complaints*

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

- (i) a complaint has been made to him or her in relation to the action by or on behalf of a child, or
- (ii) it appears to him or her, having regard to all the circumstances, that an investigation under this section into the action would be warranted.

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

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

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

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

*parentis* to the child pursuant to a statutory power or order of a Court.

(2) The Ombudsman for Children may—

- (a) having carried out a preliminary examination of the matter, decide not to carry out an investigation under this Act into an action in relation to which a complaint is made, or
- (b) discontinue an investigation under this Act into such an action, if he or she becomes of opinion that—
  - (i) the complaint is trivial or vexatious,
  - (ii) the child making the complaint, or on whose behalf the complaint is made, has an insufficient interest in the matter,
  - (iii) the child making the complaint, or on whose behalf the complaint is made, has not taken reasonable steps to seek redress in respect of the subject matter of the complaint or, if he or she has, has not been refused redress, or
  - (iv) the lapse of time since the occurrence of the matter complained of makes effective redress impossible or impracticable.

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

(4) A preliminary examination or investigation by the Ombudsman for Children shall not affect the validity of the action examined or investigated or any power or duty of the person who took the action to take further action with respect to any matters the subject of the examination or investigation.

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

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

- (a) an action that, in the opinion of the Ombudsman for Children, has or may have affected any child other than in an official capacity, or
- (b) an action the subject of a complaint to him or her by an individual acting other than in an official capacity.

(7) (a) (i) The Government may, after consultation with the Ombudsman for Children, by order amend *Schedule 1* and that Schedule shall have effect in accordance with the terms of any orders under this paragraph.

(ii) When an order is proposed to be made under this paragraph, a draft thereof

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.

- (b) (i) The Minister may by order amend Schedule 2 and that Schedule shall have effect in accordance with the terms of any orders under this paragraph.
- (ii) An order made under this paragraph shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### *Exclusions*

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

- (a) if the action is one in relation to which—
  - (i) civil legal proceedings in any court have been initiated on behalf of the child affected by the action and the proceedings have not been dismissed for failure to disclose a cause of action or a complaint justiciable by that court whether the proceedings have been otherwise concluded or have not been concluded,
  - (ii) the child affected by the action has a right, conferred by or under statute (within the meaning of section 3 of the Interpretation Act, 1937) of appeal, reference or review to or before a court in the State (not being an appeal, reference or review in relation to a decision of a court), or
  - (iii) the child affected by the action has a right of appeal, reference or review to or before a person other than a public body or, if appropriate, the school or voluntary hospital concerned,
- (b) if the action relates to or affects national security or military activity or (in the opinion of the Ombudsman for Children) arrangements regarding participation in organizations of states or governments,
- (c) relating to recruitment or appointment to any office or employment in a Department of State or by any other public body, school or voluntary hospital,
- (d) relating to or affecting the terms or conditions—
  - (i) upon and subject to which a person—
    - (I) holds any office, or

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- (II) is employed in a Department of State or by any other public body, school or voluntary hospital,
- (ii) of a contract for services, (including the terms and conditions upon and subject to which pensions, gratuities or other superannuation benefits are payable to or in respect of the person or under the contract),
- (e) if the action is one—
  - (i) taken in the administration of the law relating to asylum, immigration, naturalisation or citizenship,
  - (ii) involving the exercise of the right or power referred to in Article 13.6 of the Constitution or the remission of any forfeiture or disqualification imposed by a Court exercising criminal jurisdiction, or
  - (iii) taken in the administration of the prisons or other places for the custody or detention of children committed to custody or detention by the Courts other than reformatory schools, or industrial schools, certified under Part IV of the Children Act, 1908,
- (f) if the action relates to the results of an examination (within the meaning of section 49 of the Act of 1998),
- (g) in—
  - (i) a case where a complaint is made to the Ombudsman for Children in relation to the action, if the complaint is not made before the expiration of two years from the time of the action or the time the child making the complaint, or on whose behalf the complaint is made, became aware of the action, whichever is the later,
  - (ii) any other case, if the investigation is not commenced before the expiration of two years from the time of the action, or
- (h) if the action—
  - (i) is taken before the commencement of this Act, and
  - (ii) is not one that may be the subject of a complaint to the Ombudsman under the Act of 1980.
- (2) (a) *Subsection (1)(e)(iii)* shall cease to have effect on and after such date as may be specified in an order made by the Minister with the consent of the Minister for Justice, Equality and Law Reform.
- (b) An order made under this subsection shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that

House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

- (3) Notwithstanding *subsection (1)*, the Ombudsman for Children may investigate—
- (a) an action to which *paragraph (a)* of that subsection relates if it appears to him or her that special circumstances make it proper to do so,
  - (b) an action that would contravene *paragraph (g)* of that subsection if it appears to him or her that special circumstances make it proper to do so, or
  - (c) insurability and entitlement to benefit under the Social Welfare Acts.

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

- (a) a Department of State whose functions are assigned to that Minister of the Government, or
- (b) a public body (other than a Department of State) whose business and functions are comprised in such a Department of State or in relation to which functions are performed by such a Department of State, (whether or not all or any of the functions of that Minister of the Government stand delegated to a Minister of State at that Department of State).

### *Amendment of section 5 of Act of 1980*

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

- (a) the deletion of “or” after *paragraph (f)*,
- (b) the substitution in *paragraph (g)* of “this Act, or” for “this Act;”, and
- (c) the insertion of the following *paragraph (g)*:

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

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

### *Examination and investigation of complaints*

#### *Reports*

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

- (a) a statement in writing of his or her reasons for the decision, and
- (b) if the decision follows the receipt by the Ombudsman for Children of a request under *section 11(4)*, a copy of the request and of the statement in writing of the reasons for the request attached to the request, and he or she shall send to such other (if any) person as he or she considers appropriate such statement in writing in relation to the matter as he or she considers appropriate.

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

- (a) to the public body, school or voluntary hospital concerned,
- (b) (i) to the Department of State in which are comprised the business and functions of, or which performs functions in relation to, any public body (other than a Department of State) to whom a statement is sent under *paragraph (a)*,  
(ii) where the investigation relates to an action taken by or on behalf of a school, to the Department of Education and Science, or  
(iii) where the investigation relates to an action taken by or on behalf of a voluntary hospital, to the health board (other than the Eastern Regional Health Authority, if appropriate) within whose functional area the voluntary hospital is situated,
- (c) any other person who has or, in a case where a complaint in relation to the action the subject of the investigation has been made to the Ombudsman for Children, is alleged in the complaint to have taken or authorised the action, and
- (d) any other person to whom he or she considers it appropriate to send the statement.

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

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

Reports, etc.

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

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

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

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

(6) The Ombudsman for Children shall not make a finding or criticism adverse to a person in a statement under *subsection (1)* or *(2)*, or in a recommendation or report under *subsection (3)* or *(5)*, without having afforded to the person an opportunity to consider the finding or criticism and to make representations in relation to it to him or her.

(7) The Ombudsman for Children shall cause a report on the performance of his or her functions under this Act to be laid before each House of the Oireachtas annually and may from time to time cause to be laid before each such House such other reports with respect to those functions as he or she thinks fit. The terms of a request under *section 11(4)* and of the statement in writing of the reasons for the request attached to the request shall be included in a report under this section.

(8) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

(a) the publication of any matter by the Ombudsman for Children in making a report to either House of the Oireachtas for the purpose of this Act,

(b) the publication by the Ombudsman for Children—

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

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

pursuance of that subsection,

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

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

### *Powers in respect of preliminary examinations and investigations*

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

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

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

and any other necessary modifications.

### *Conduct of investigations*

**15.**—Section 8 of the Act of 1980 shall apply to the conduct by the Ombudsman for Children of investigations by him or her under this Act as it applies to the conduct by the Ombudsman of investigations by him or her under that Act with the modification that the reference in subsection (2)(a) of that section to any Department of State, or other person specified in Part I of the First Schedule to that Act, concerned shall be construed as a reference to any public body, school or voluntary hospital concerned, and with any other necessary modifications.

### *Secrecy of information*

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

## CHAPTER 6

### *Miscellaneous*

#### *Accounts and audits*

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

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

#### *Attendance before Public Accounts Committee*

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

- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Ombudsman for Children is required to prepare under this Act,
- (b) the economy and efficiency of the Ombudsman for Children in the use of resources,
- (c) the systems, procedures and practices employed by the Ombudsman for Children for the purposes of evaluating the effectiveness of the operation of the office of the Ombudsman for Children, and
- (d) any matter affecting the Ombudsman for Children referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act, 1993, or in any other report of the

Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

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

### *Attendance before other committees of Houses of Oireachtas*

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

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

- (a) relating solely to an individual complaint made to him or her under this Act in relation to an action, or
- (b) which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

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

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

- (a) the Ombudsman for Children may, not later than 21 days after being informed by the committee of its decision not to do so, apply to the High Court in a summary manner for a determination as to whether the matter is one to which *subsection (2)* applies, or
- (b) the chairperson of the committee may, on behalf of the committee, make such an application, and the High Court may determine the matter.

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

(6) If the High Court determines that the matter concerned is one to which *subsection*

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

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

- (a) the Committee referred to in *section 18*,
- (b) the Committee on Members’ Interests of Dáil Éireann, or
- (c) the Committee on Members’ Interests of Seanad Éireann, or a subcommittee of such a committee.

### *Amendment of Freedom of Information Act, 1997*

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

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

“(jj) in relation to the office of the Ombudsman for Children, the Ombudsman for Children,”,

(b) in section 46(1)(c)—

(i) by the deletion of “or” at the end of subparagraph

(ii) and the substitution of the following subparagraphs for subparagraph (iii):

“(iii) an examination or investigation carried out by the Ombudsman under the Ombudsman Act 1980, or (iv) an examination or investigation carried out by the Ombudsman for Children under the *Ombudsman for Children Act, 2002*,”,

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

and

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

### *Staff*

**21.**—(1) The Minister may, with the consent of the Minister for Finance, appoint such and so many persons to be members of the staff of the Ombudsman for Children as the Minister may determine.

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

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

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

- (a) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Ombudsman for Children, and
- (b) the Ombudsman for Children shall, in lieu of the Minister, be, for the purposes of this Act, the appropriate authority in relation to members of the staff of the Ombudsman for Children.

### SCHEDULE 1

*Section 2*

#### PUBLIC BODIES SUBJECT TO INVESTIGATION

##### PART 1

Subject to *Part 2* of this Schedule, each of the following shall be a public body for the purposes of this Act:

- (1) Department of Agriculture, Food and Rural Development;
- Department of Arts, Heritage, Gaeltacht and the Islands;
- Department of Defence;
- Department of Education and Science;
- Department of Enterprise, Trade and Employment;
- Department of the Environment and Local Government;
- Department of Finance;
- Department of Foreign Affairs;
- Department of Health and Children;
- Department of Justice, Equality and Law Reform;
- Department of the Marine and Natural Resources;

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- Department of Public Enterprise;  
Department of Social, Community and Family Affairs;  
Department of the Taoiseach;  
Department of Tourism, Sport and Recreation;
- (2) an Bord Bia;  
an Bord Glas;  
an Post;  
Central Statistics Office;  
Civil Service Commissioners;  
Commissioner of Valuation and Chief Boundary Surveyor;  
Commissioners of Public Works in Ireland;  
Companies Registration Office;  
Environmental Protection Agency;  
Food Safety Authority of Ireland;  
Heritage Council;  
Irish Sports Council;  
Land Registry;  
National Authority for Occupational Safety and Health;  
National Library of Ireland;  
National Museum of Ireland;  
Radiological Protection Institute of Ireland;  
Registry of Deeds;  
Revenue Commissioners;  
State Laboratory;
- (3) a local authority;
- (4) a health board.

## PART 2

The reference in *Part 1* of this Schedule to the Department of Arts, Heritage, Gaeltacht and the Islands does not include a reference to the Broadcasting Complaints Commission.

The reference in the said *Part 1* to the Department of Defence does not include a reference to the—

Army Pensions Board;

Defence Forces.

The reference in the said *Part 1* to the Department of Education and Science does not include a reference to—

an appeals committee within the meaning of section 29 of the Act of 1998;

a person or body of persons appointed under section 51(2) of the Act of 1998.

The reference in the said *Part 1* to the Department of Enterprise, Trade and Employment does not include a reference to the—

Director of Consumer Affairs;

Employment Appeals Tribunal;

Labour Court;

Labour Relations Commission;

Rights Commissioners.

The reference in the said *Part 1* to the Department of Health and Children does not include a reference to—

An Bord Uchtála.

The reference in the said *Part 1* to the Department of Justice, Equality and Law Reform does not include a reference to—

Courts or court officers (other than those who were transferred to the Courts Service) mentioned in the Court Officers Acts, 1926 to 1999, or in the Courts (Supplemental Provisions) Act, 1961;

Data Protection Commissioner and his or her staff;

Director of Equality Investigations and his or her staff; Sch. 1

Equality Authority;

An Garda Síochána;

Garda Síochána Complaints Board;

a tribunal appointed under section 8 of the Garda Síochána (Complaints) Act, 1986.

The reference in the said *Part 1* to a local authority does not include a reference to—

a local authority when performing reserved functions within the meaning of the County Management Acts, 1940 to 1994, or reserved functions within the meaning of any of the Acts relating to the management of a county borough.

The reference in the said *Part 1* to a health board does not include a reference to—

(a) persons when acting on behalf of the health board and (in the opinion of the

Ombudsman for Children) solely in the exercise of clinical judgment in connection with the diagnosis of illness or the care or treatment of a patient, whether formed by the person taking the action or by any other person, or

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

The reference in the said *Part 1* to the Revenue Commissioners does not include a reference to—

the Appeal Commissioners for the purposes of the Income Tax Acts or their staff.

## SCHEDULE 2

*Section 9(1)(c)*

### VOLUNTARY HOSPITALS

Mercy Hospital, Grenville Place, Cork.

South Infirmary-Victoria Hospital Limited, Old Blackrock Road, Cork.

St. John's Hospital, St. John's Square, Limerick.

### 附錄五 愛爾蘭兒童監察使公署提出教育類型的案例分析

#### **Investigations and Case Studies - Child's right to education**

##### **The complaint**

The Office has received a number of complaints from non-Irish nationals who considered that their child was being denied their right to an education. The Department of Justice Equality and Law Reform had informed the parents that, due to conditions set out in their visa, their children could not avail of public education.

##### **Action**

This is an issue which raises important human rights and policy considerations. This Office made contact with the relevant authority and indicated that all children have the right to an education and that a child should not be denied this right on the basis of the immigration status of their parents.

##### **Response**

The Department of Justice Equality and Law Reform agreed to consider making an exception for the current school year (2007). All of the children concerned have remained in public school.

##### **Postscript**

The immigration legislation is currently changing and will most likely determine the situation into the future. In this case the Ombudsman for Children has continued working on this issue in accordance with Section 7 of the Act which provides that the Ombudsman for Children can advise on any matter related to the rights and welfare of children. The Ombudsman for Children was invited to comment on the new Immigration, Residence and Protection Bill, 2008. In her Advice, the Ombudsman expressed concern at the extent of Ministerial discretion provided for in the Bill for the setting of conditions for residence in the State.

She emphasised that children's Constitutional rights – including the right to free primary education – and their rights under the UN Convention on the Rights of the Child are nondependent on their nationality. She recommended that an explicit requirement for the Minister to have regard to those standards – especially the best interests principle contained in the UN Convention on the Rights of the Child – when making such regulations be included in the Bill.

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### 附錄六 愛爾蘭兒童監察使公署歷年提出的政策文件主題一覽表

Adoption	Advice of the Ombudsman for Children on the Adoption Bill 2009 - November 2009 (225KB)
Asylum and immigration	Advice of the Ombudsman for Children on the Immigration, Residence and Protection Bill 2008 - March 2008 (127KB)
Barriers to children's rights	Barriers to the Realisation of Children's Rights in Ireland by Dr Ursula Kilkelly Faculty of Law, University College Cork Commissioned by the Ombudsman for Children - 2007 (757KB)
Child death review	Advice of the Ombudsman for Children on the Health (Amendment) Bill 2010 - June 2010 (147KB)
Child protection	Report of the Ombudsman for Children to the Oireachtas Joint Committee on Health and Children on complaints about child protection - January 2006 (418KB) A report based on an investigation into the implementation of Children First: National Guidelines for the Protection and Welfare of Children (893KB)
Constitutional referendum	Report to the Oireachtas on the Thirty-First Amendment of the Constitution (Children) Bill 2012 - October 2012 (137KB) Submission to the Oireachtas Joint Committee on Health and Children Consultation on Primary Medical Care in the Community - November 2008 (202KB) Submission to the Joint Committee on the Constitutional Amendment on Children - February 2008 (208KB) Report to the Oireachtas on the Twenty-Eighth Amendment of the Constitution Bill 2007 - March 2007 (183KB) Advice of the Ombudsman for Children on the proposed referendum on children's rights - December 2006 (183KB) Submission to the All-Party Oireachtas Committee on the Constitution - January 2005 (158KB)
Criminal law	Advice of the Ombudsman for Children in relation to the Spent Convictions Bill 2007 - March 2008 & June 2009

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	(156KB) Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006 - May 2007 (198KB)
Education	Submission to the Forum on Pluralism and Patronage - August 2011 (148KB) Advice on issues related to the manifestation of religious belief in schools - August 2008 (92KB) Submission of the Ombudsman for Children to the Oireachtas Joint Committee on Education and Science Regarding School Transport - March 2007 (107KB) Submission to the Task Force on Student Behaviour - March 2005 (125KB)
Family Law	Advice on the Courts Bill 2013 - June 2013 (258KB) Advice of the Ombudsman for Children on the Civil Partnership Bill 2009 - July 2010 (123KB)
Health & social care	Advice of the Ombudsman for Children on the Child Care (Amendment) Bill 2009 - August 2010 (138KB)
Human rights analysis of OCO investigations	A Children's Rights Analysis of Investigations by Dr Ursula Kilkelly Faculty of Law, University College Cork Commissioned by the Ombudsman for Children - 2011 (572KB)
International networks	Report to the Oireachtas Joint Committee on Foreign Affairs and Joint Committee on European Affairs - June 2008 (114KB)
Separated children	Separated children living in Ireland - A report by the Ombudsman for Children's Office (661KB)
Trafficking	Submission of the Ombudsman for Children National Action Plan against Trafficking in Human Beings - January 2008 (96KB) Advice on the General Scheme of the Criminal Law (Trafficking in Persons and Sexual Offences) Bill 2006 - May 2007 (198KB)
International Monitoring	Submission for the 12th Session of the Working Group on Universal Periodic Review - March 2011 (241KB)

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	<p>Report of the Ombudsman for Children on the occasion of the examination of Ireland's First Report under the Optional Protocol to the CRC on the involvement of Children in Armed Conflict - October 2007 (143KB)</p> <p>Report of the Ombudsman for Children to the UN Committee on the Rights of the Child on the occasion of the examination of Ireland's Second Report to the Committee - April 2006 (436KB)</p>
Youth justice	<p>Advice of the Ombudsman for Children on the proposed changes to the Children Act, 2001 - April 2006 (216KB)</p> <p>Young people in St. Patrick's Institution - A report by the Ombudsman for Children's Office - 2011 (426KB)</p>

附錄七 「歐洲監察使網絡第9屆全國研討會」 (Ninth National Seminar of the European Network of Ombudsmen)之會議日程表



Red Europea de Defensores del Pueblo  
Europäisches Verbindungsnetz der  
Bürgerbeauftragten  
European Network of Ombudsmen  
Réseau européen des Médiateurs  
Rete europea dei difensori civici

**Good administration and  
the rights of citizens in a time of austerity**

**15 – 17 September 2013**

**Programme**

**Ninth National Seminar of the  
European Network of Ombudsmen**

Jointly organised by the Irish Ombudsman and the European Ombudsman

**Dublin Castle**

**Ireland**

## **Sunday, 15 September**

**14.00 – 16.00 (Optional)**

### **Self-guided tour of Trinity College and the Book of Kells**

(Information on this tour will be available for delegates in their hotel. Trinity College is centrally located and is within a ten minute walk of the two recommended hotels)

**18.30 – 22.00**

**Guided tour of the Jameson Irish Whiskey distillery, followed by a welcome reception, entertainment, and dinner**

## **Monday, 16 September**

**9.00 – 9.30**

### **Opening of the Seminar**

Brendan Howlin TD

Minister for Public Expenditure and Reform

Emily O'Reilly

Ombudsman of Ireland

P. Nikiforos Diamandouros

European Ombudsman

**9.30 – 10.00**

### **Keynote speech**

**Chair**

P.Nikiforos Diamandouros

European Ombudsman

**Keynote speaker**

Paulius Griciūnas

Vice-Minister of Justice, Lithuanian Presidency of the European Union

**10.00 – 10.30**

### **Coffee break**

**10.30 – 12.15**

### **Session 1**

#### **Innovation in ombudsman offices**

**Chair**

Catherine De Bruecker

Ombudsman of Belgium

**Panellists**

Jørgen Steen Sørensen

Ombudsman of Denmark

(Lessons from the field: the survey of Network members)

Two further panellists identified through the survey of Network members

**Discussant**

Tom Frawley

Ombudsman of Northern Ireland

**Questions and discussion**

**12.15 – 12.30**

**Group photo**

**12.30 – 14.15**

**Lunch**

in the Seminar venue

**14.15 – 15.45**

**Session 2**

**Reforming out of austerity**

**Chair**

Alex Brenninkmeijer

Ombudsman of the Netherlands

**Panellists**

Juris Jansons

Ombudsman of Latvia

(Keeping administrations accountable)

Julie Mellor

Ombudsman of the United Kingdom

(When public goes private: challenges for the ombudsman)

**Discussant**

Calliope Spanou

Ombudsman of Greece

**15.45 – 16.15**

**Coffee break**

**16.15 – 16.45**

**Keynote speech**

**Chair**

Emily O'Reilly

Ombudsman of Ireland

**Keynote speaker**

Ann Abraham

Former Ombudsman of the United Kingdom

(Good administration in difficult times)

**16.45 – 17.45**

### **Session 3**

#### **The European Network of Ombudsmen**

**Chair**

Arne Fliflet

Ombudsman of Norway

**Panellist**

P. Nikiforos Diamandouros

European Ombudsman

(Developments in the Network)

#### **Questions and discussion**

**17.45 – 18.00**

#### **Conclusions and announcements**

Róbert Ragnar Spanó

Acting Ombudsman of Iceland

**18.00**

#### **End of the first day's proceedings**

**19.30 – 22.30**

#### **Dinner**

St. Patrick's Hall, Dublin Castle

**Welcome speech**

Brendan Howlin TD

Minister for Public Expenditure and Reform

## **Tuesday, 17 September**

**9.00 – 10.30**

### **Session 4**

#### **Making the citizen count**

**Chair**

Gertrude Brinek

Ombudsman of Austria

### Panellists

Emily O'Reilly

Ombudsman of Ireland

(Serving the citizen: the role of the administration)

Soledad Becerril Bustamante

Ombudsman of Spain

(Citizen engagement: the role of the ombudsman)

### Discussant

Augustinas Normantas

Ombudsman of Lithuania

### Questions and discussion

#### 10.30 – 10.45

### Closing of the Seminar and summing up

Emily O'Reilly

Ombudsman of Ireland

P. Nikiforos Diamandouros

European Ombudsman

#### 10.45

### Transfer to Aras an Uachtaran, official residence of the President

#### 11.30

### Visit to His Excellency Michael D. Higgins, President of Ireland

#### 12.00

### Transfer to the Seminar venue

#### 12.45 – 14.30

### Lunch

in the Seminar venue

### Departure of participants