

Compilation of Reference Texts

International References for the Establishment of Ombuds Institutions



PCSSS

Palestinian Centre for
Security Sector Studies
(PCSSS)



Geneva Centre for the
Democratic Control of
Armed Forces (DCAF)

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Representative Office
of the Federal Republic of Germany
Ramallah



Geneva Centre for the
Democratic Control of
Armed Forces (DCAF)

About DCAF

The Geneva Centre for the Democratic Control of Armed Forces (DCAF) promotes good governance and reform of the security sector. The Centre conducts research on good practices, encourages the development of appropriate norms at the national and international levels, makes policy recommendations and provides in-country advice and assistance programmes. DCAF's partners include governments, parliaments, civil society, international organisations and the core security and justice providers such as police, judiciary, intelligence agencies, border security services and the military.

DCAF has worked in the Palestinian Territories since 2005. It assists a wide range of Palestinian actors such as ministries, the Palestinian Legislative Council, civil society organisations and the media in their efforts to make Palestinian security sector governance democratic, transparent and accountable.

About PCSSS

The Palestinian Centre for Security Sector Studies (PCSSS) is an independent, non-profit organisation, affiliated with the Palestinian Academy for Security Sciences (PASS) and dedicated to the promotion of knowledge about security sector reform in Palestine. PCSSS seeks to provide a platform for scholars, public officials and professionals concerned with security sector reform and with the provision of well-researched, factual, independent material to contribute to the development of the Palestinian security sector.

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Disclaimer

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Introduction

In 2010, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the Palestinian Center for Security Sector Studies (PCSSS) at the Palestinian Academy for Security Sciences (PASS) jointly implemented the project 'Assessing Complaints Mechanisms of the Palestinian National Authority at Governorate and National Levels.' The project entailed an assessment of complaint mechanisms for citizens in the West Bank. It also included a mapping workshop of mechanisms at the governorate and national level. This workshop brought together representatives of all complaints bodies of the Palestinian National Authority (PNA).

As outputs of this project, DCAF and PCSSS have published two compilations of reference texts. These are:

- *A Palestinian Legal Collection: Ombuds Institutions and Security Sector Governance* (Geneva, DCAF, 2010) which includes Palestinian laws and regulations for complaint mechanisms; and
- *Establishing Effective Local Complaints Mechanisms for Palestinian Citizens* (Geneva, DCAF, 2010), which presents the results of the assessment of the Palestinian complaint handling mechanisms.

Participants in the DCAF-PCSSS workshops also expressed the need to obtain access to standards and laws regulating the work of ombuds institutions from an international best practices perspective. In response to this request, DCAF has gathered various legal texts to be presented in the present bilingual legal collection.

Ombuds institutions and security sector governance

Ombuds institutions that have jurisdiction over the security and armed forces exist in different legal and institutional forms. The present reader introduces international standards and various national legislations for the following three models of ombuds institutions:

- parliamentary ombuds institutions;
- general ombuds institutions; and
- ombuds institutions for the armed forces.

Main functions of ombuds institutions with jurisdiction over security forces

Ombuds institutions that have jurisdiction over the security and armed forces serve several important functions.

Firstly, they contribute to strengthening accountability of the law enforcement agencies and their management bodies by ensuring quality control over their work and providing a barometer for people's satisfaction.

Secondly, they make policy recommendations with a view to ensuring that security and armed forces are governed and act in accordance with the rule of law.

Thirdly, they provide a useful tool for monitoring the security and armed forces' compliance with human rights law and international humanitarian law.

International References for the Establishment of Ombuds Institutions

What are the basic principles guiding an ombuds institution?

In order to deliver their services properly, ombuds institutions need to adhere to a basic set of principles that allow them to effectively fulfil their role as an independent mediator between the public and the government. These principles set the policy guidelines for legislating and setting up ombuds institutions. They are outlined in the Code of Ethics of the International Ombudsman Association (see Box 1).

Box 1: The Code of Ethics of the International Ombudsman Association

The Code of Ethics lists the following principles:

- **Independence:** The ombudsman is independent in structure, function, and appearance to the highest degree possible within the organization.
- **Neutrality and impartiality:** The ombudsman, as a designated neutral, remains unaligned and impartial. The ombudsman does not engage in any situation which could create a conflict of interest.
- **Confidentiality:** The ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

(<http://www.ombudsassociation.org/about-us/code-ethics>)

Ombuds institutions, international law and human rights

International organisations such as the United Nations have promoted the establishment of national ombuds institutions and stressed their importance as effective measures to promote and protect human rights.

In 1993, the United Nations (UN) Commission on Human Rights adopted the **Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and**

Promotion of Human Rights¹ (see Part I of the present reader). These principles affirm that national complaints handling institutions should:

- have the competence to receive and act on complaints of human rights violations;
- seek amicable settlements through conciliation;
- inform complainants of their rights and how to seek redress;
- hear complaints or petitions and transmit them to any other competent authority; and
- make recommendations to solve human rights problems including by amending laws or other acts that obstruct the free exercise of rights.

Other international treaties and resolutions have affirmed the necessity for states to establish independent ombuds institutions as an effective measure to prevent grave human rights violations.

The UN General Assembly adopted the **Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment**² in 2002. The Optional Protocol entered into force in 2006 and has been ratified by 61 states until 2011. It recommends the establishment of independent national mechanisms for the prevention of torture. According to this Optional Protocol, national preventive mechanisms should be established and should be granted, as a minimum standard, the power to:

- regularly examine the treatment of the persons deprived of their liberty in places of detention;
- make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty; and
- submit proposals and observations to reform or amend existing laws with a view to ensuring respect for human rights.

¹ The full text can be found in Part I of this reader, or consulted online at: <http://www2.ohchr.org/english/law/parisprinciples.htm>.

² See: A/RES/57/199 (Art. 17-23), available at: <http://www2.ohchr.org/english/law/cat-one.htm>

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What does the national legal framework for ombuds institutions include?

To function effectively, ombuds institutions need a proper legislative basis for their activities. The mandate, powers, organisation, methods and scope of ombuds institutions are usually set forth by specific national legislation.

The following introduces legislation adopted for parliamentary and general ombuds institutions as well as ombuds institutions for the armed forces in several democratic countries. The laws for the country examples presented here are reproduced below.

► Legislating for parliamentary ombuds institutions

Parliamentary ombuds institutions in Sweden, the Netherlands or in certain German *Laender* (such as Rhineland-Palatinate) are set up as an integral part of the legislative body. The members of these institutions (three in Sweden and the Netherlands) are appointed by parliament and exert the function of legislative oversight over the public bodies that fall under parliamentary control. Rooted in the 1809 constitution, the Swedish case is seen as the first example of such a parliamentary ombuds institution in history.

Parliamentary ombuds institutions have jurisdiction over a large spectrum of activities performed by the public administration. They do not deal exclusively with the armed forces, although they might have specific jurisdiction over armed forces personnel. For instance, the *Swedish 1986 Act with Instructions for the Parliamentary Ombudsmen* specifies that the parliamentary ombudsmen are only entitled to supervise “commissioned officers with the rank of second lieutenant or above, and to those of corresponding rank” (Art. 2, paragraph 4).

Certain laws set exceptions to parliamentary ombuds institutions’ access to information on the basis of national security interests. In the Netherlands for instance, the Dutch 1931 Military Personnel Act and the 1993 Police Act (Section 19, 4) define which information armed personnel such as soldiers and policemen have to provide to ombudsmen and which information they are not obliged to share with them.

► Legislating for general ombuds institutions

General ombuds institutions differ from parliamentary ombuds institutions by their structural independence from the legislature. The South African Public Protector, which is both an institution and a person, is appointed by the President of the Republic. The selection process is completed by a National Assembly vote, but the appointed Public Protector is formally and financially independent from parliament.

Like their parliamentary peers, general ombuds institutions such as the Public Protector in South Africa and the Ombudsman in British Columbia (Canada) have broad mandates that are not limited to handling complaints against security forces. The South African Public Protector for instance encompasses the broad role of “strengthening democracy by ensuring that all state organs are accountable, fair and responsive in the way they treat all persons and deliver services” (Office of the Public Protector of South Africa: *Constitutional and Legislative Mandate of the Public Protector (2010)*, “Foreword”).

In British Columbia (Canada), the ombudsman has a specific role in overseeing the situation in the state prisons. The Ombudsman Act emphasizes that it is possible for persons held in custody to submit complaints to the Ombudsman. In such cases, custodians have a duty to transmit the grievances within the shortest delays (Canada: *British Columbia Ombudsman Act (1996)*, §12, (3)).

► Legislating for ombuds institutions for the armed forces

Some countries have established ombuds institutions that deal exclusively with the armed and security forces. Among these countries are Germany, Northern Ireland, Austria, Belgium, Norway and the United Kingdom. The ombuds institutions for the armed forces are either set up within parliament (as it is the case in Germany) or directly embedded in the law-enforcement agencies (such as the institution established in Northern Ireland).

By law, the German *Parliamentary Commissioner for the Armed Forces* is meant to work as an auxiliary to the *Bundestag* for the supervision and control of the military. He/she “may demand information and access to records from the

International References for the Establishment of Ombuds Institutions

Minister of Defence and all the Minister's subordinate agencies and personnel", unless this goes against "compelling reasons of secrecy" (Germany: *Parliamentary Ombudsman of Armed Forces* (1957), Section 3, 1).

of ombuds institutions and complaints mechanisms in line with democratic values.

The case of the Northern Ireland Police Ombudsman provides another example of an ombuds institution that deals with the security forces; yet, it is fully integrated within the police force. The Ombudsman reports to the Northern Ireland Assembly through the Minister for Justice. Its mandate and responsibilities are defined in Art. 50-65 of the Northern Ireland Police Act of 1988.³

What is the purpose of this reader?

This reader offers a broad collection of national legislation for ombuds institutions operating in several democratic countries. Its purpose is to provide practitioners in charge of reviewing and reforming ombuds and complaints handling systems with an overview of existing laws enacted by democratic countries worldwide.

How is this reader structured?

The reader presents a collection of international standards and laws establishing and regulating the work of ombuds institutions in several countries. In the first part, the reader presents the Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights, which were endorsed by the United Nations General Assembly in 1993. In the second part, it presents legislation establishing parliamentary ombuds institutions in Sweden, the Netherlands and in the German *Land* of Rhineland-Palatinate. The third part presents legislation establishing general ombuds institutions in South Africa and British Columbia (Canada). The last part includes legislation -of the ombuds institutions for security and armed forces in Germany and Northern Ireland.

DCAF remains available to support national efforts to establish or reform the legal framework

³ Table 1 below provides a selection of existing ombuds institutions worldwide according to whether they are parliamentary or general ombuds institutions, or ombuds institutions for the armed forces.

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Table 1: Overview of selected ombuds institutions worldwide

Type	Country	Name of Institution
Parliamentary ombuds institutions	Sweden	Parliamentary Ombudsmen
	Germany	Rhineland-Palatinate Ombudsman
	Netherlands	National Ombudsman
	Finland	Parliamentary Ombudsman of Finland
General ombuds institutions	Canada	British Columbia Ombudsman
	Estonia	Office of the Chancellor of Justice
	Poland	Commissioner for Civil Rights Protection
	Romania	People's Advocate Institution
	Serbia	Protector of Citizens
	Slovenia	Human Rights Ombudsman
	South Africa	Public Protector
Ombuds institutions for the armed forces	Austria	Parliamentary Complaints Commission of the Austrian Armed Forces
	Belgium	Inspector General Mediator of the Belgian Armed Forces
	Canada	Ombudsman for the Department of National Defence and the Canadian Forces
	Germany	Parliamentary Commissioner for the Armed Forces
	Ireland	Ombudsman for the Defence Forces
	Netherlands	Inspector General of the Armed Forces
	Norway	Parliamentary Ombudsman for the Armed Forces
	United Kingdom	Service Complaints Commissioner

Adapted from: Born, Hans, Wills, Aidan and Buckland, Benjamin: *Comparative Perspective of Ombudsman Institutions for the Armed Forces*, DCAF Policy Paper No. 34, Geneva, 2011.

Part I:
International Standards for
Ombuds Institutions

United Nations General Assembly

Paris Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (1993)

Adopted by General Assembly resolution 48/134 of 20 December 1993

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - a. To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - i. Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - ii. Any situation of violation of human rights which it decides to take up;
 - iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - iv. Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
 - b. To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;

International References for the Establishment of Ombuds Institutions

- c. To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
 - d. To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
 - e. To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
 - f. To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
 - g. To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.
- a. associations of lawyers, doctors, journalists and eminent scientists;
 - b. Trends in philosophical or religious thought;
 - c. Universities and qualified experts;
 - d. Parliament;
 - e. Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).
2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.
 3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
 - a. Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example,

Methods of operation

Within the framework of its operation, the national institution shall:

- a. Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- b. Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c. Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

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- d. Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
 - e. Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
 - f. Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
 - g. In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.
- c. Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
 - d. Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a. Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b. Informing the party who filed the petition of his rights, in particular

Part II:
Legislation for Parliamentary
Ombuds Institutions

Sweden

Act [1986:765] with Instructions for the Parliamentary Ombudsmen (1986)

Issued on 13 November 1986

In accordance with the decision of the Riksdag the following has been determined.

Tasks

Article 1

In accordance with 8.11 of the Riksdag Act, there are four Ombudsmen, a Chief Parliamentary Ombudsman and three Parliamentary Ombudsmen. In addition to this, there may be Deputy Ombudsmen.

The Chief Parliamentary Ombudsman and the Parliamentary Ombudsmen are to supervise, to the extent laid down in Article 2, that those who exercise public authority are to obey the laws and other statutes and fulfil their obligations in other respects. Act (1995:404).

Article 2

Those supervised by the Ombudsmen are

- 1) state and municipal authorities,
- 2) officials and other employees of these authorities,
- 3) other individuals whose employment or assignment involves the exercise of public authority, insofar as this aspect of such activity is concerned,
- 4) officials and those employed by public enterprises, while carrying out, on behalf of such an enterprise, activities in which

through the agency of the enterprise the Government exercises decisive influence.

Where officers in the armed forces are concerned, however, this supervision extends only to commissioned officers with the rank of second lieutenant or above, and to those of corresponding rank.

The supervision of the Ombudsmen does not extend to

- 1) Members of the Riksdag,
- 2) The Riksdag Board of Administration, the Riksdag's Election Review Board, the Riksdag's Complaints Board or the Clerk of the Chamber,
- 3) Members of the Governing Board of the Riksbank, members of the Executive Board of the Riksbank, except to the extent of their involvement in exercise of the powers of the Riksbank to make decisions in accordance with the Act on the Regulation of Currency and Credit (1992:1602),
- 4) the Government or Ministers,
- 5) the Chancellor of Justice, and
- 6) members of policy-making municipal bodies.

An Ombudsman is not subject to the supervision of any other Ombudsman.

The term official is used in this act, unless otherwise indicated by the context, to refer to those who are subject to the supervision of the Ombudsmen.

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Article 3

The Ombudsmen are to ensure in particular that the courts and public authorities in the course of their activities obey the injunction of the Instrument of Government about objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

In supervision of municipal authorities the Ombudsmen are to take into consideration the forms taken by municipal self-determination.

Article 4

The Ombudsmen are to contribute to remedying deficiencies in legislation. If, during the course of their supervisory activities, reason is given to raise the question of amending legislation or of some other measure by the state, the Ombudsmen may then make such representations to the Riksdag or the Government.

The Parliamentary Ombudsmen are to consult the Chief Parliamentary Ombudsman before making the representations referred to in the above paragraph.

Article 5

Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary. The Ombudsmen are to consult the Chief Parliamentary Ombudsman on the inspections and other inquiries they intend to carry out.

The Parliamentary Ombudsmen also undertake the tasks incumbent on a national preventive mechanism pursuant to the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Act (2011:340)

Article 6

The Ombudsmen conclude cases with an adjudication, which states an opinion as to whether a measure taken by an authority or an official is in breach of the law or some other statute, or is otherwise erroneous or inappropriate. The Ombudsmen may also make

statements intended to promote uniform and appropriate application of the law.

In the role of extra-ordinary prosecutor, an Ombudsman may initiate legal proceedings against an official who, in disregarding the obligations of his office or his commission, has committed a criminal offence other than an offence against the Freedom of the Press Act or right to freedom of expression. If an inquiry into a case gives an Ombudsman reason to believe that such a criminal offence has been committed, the stipulations in the law concerning preliminary inquiries, prosecution and waiver of prosecution are to apply, together with those regarding the powers otherwise afforded to prosecutors in criminal cases subject to public prosecution. Cases brought before a district court are to be pursued to the Supreme Court only if there are exceptional grounds for doing so.

If proceedings can be taken by means of disciplinary measures against an official who, in disregarding the obligations of his office or his commission, has committed an error, the Ombudsmen may report the matter to those empowered to decide on such measures. In the case of an individual with professional certification or some other authorisation entitling him to practise within the medical profession, as a dentist, or in retail trade in pharmaceutical products, or as a veterinary surgeon, who has displayed gross incompetence in his professional activities or shown himself in some other way to be obviously unsuitable to practise, the Ombudsmen may submit a report to those who have the authority to decide on the revocation of the qualification or the authorisation. A similar request for limitation of the scope of the qualification may be made when somebody with such qualifications has abused his powers in some other way. If an individual with professional certification or some other authorisation entitling him to practise within the medical profession, as a dentist, or in retail trade in pharmaceutical products, has displayed incompetence in his professional activities or shown himself in some other way unsuitable to practise his profession, the Ombudsman may request the imposition of a probationary period of those who have the authority to make such a decision.

Should the Ombudsmen consider it necessary that the official be dismissed or temporarily

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deprived of his office because of criminal acts or gross or repeated misconduct, the Ombudsman may report the matter to those empowered to decide on such a measure. When an Ombudsman has made a report of the kind referred to in the two preceding paragraphs, he is to be given the opportunity to supplement his own inquiry into the case, and to submit an opinion on any inquiry into the case carried out by some other person, as well as the right to be present if oral questioning occurs. This is not to apply, however, if the case concerns temporary deprivation of office. Act (1998:540)

Article 7

If an authority has decided against an official in a case involving application of special regulations in the law or other statutes concerning officials and matters of discipline, or dismissal or temporary deprivation of office because of criminal acts or misconduct, an Ombudsman may refer the case to a court of law for amendment of the decision. This is also to apply to the decision of an authority in a case concerning disciplinary measures against medical or hospital staff, veterinary surgeons, those serving in the armed forces or subject to discipline according to the Act on Discipline within Total Defence etc. (1994:1811) as well as the decision of an authority in cases concerning probationary periods or issues concerning certification of the kind referred to in the third paragraph of Article 6. More detailed regulations about such referral are issued in the form of law or some other statute.

If an official, in accordance with the stipulations in force, has applied to a court for amendment of a decision of the kind referred to in the above paragraph, and if the decision was made as a result of a report from an Ombudsman, the Ombudsman is to act on behalf of the public against the official during the dispute. This is also to apply if the Ombudsman has sought amendment of the decision.

The stipulations of laws or other statutes applying to employers are, where disputes referred to in this paragraph are concerned, to apply correspondingly to the Ombudsmen. The stipulations in 4.7 and 5.1 of the Act on Litigation in Labour Disputes (1974:371) are not, however, to apply in cases where the action is being brought by an Ombudsman. Act (1998:540).

Article 8

The Ombudsmen should not intervene against a subordinate official with no independent powers, unless there are exceptional reasons for doing so.

Article 9

The powers of the Ombudsmen to initiate legal proceedings against a member of the Supreme Court or the Supreme Administrative Court or to press for the dismissal or deprivation of office of such an official, or for the requirement that the official submit to medical examination are laid down in the Instrument of Government.

Article 10

The Ombudsmen are obliged to initiate and prosecute those legal proceedings which the Committee on the Constitution has decided to institute against a Minister, in accordance with 12.3 of the Instrument of Government, and also legal proceedings against officials within the Riksdag or its agencies decided by committees of the Riksdag, in accordance with the regulations, but not, however, legal proceedings against an Ombudsman.

The Ombudsmen are also obliged to assist committees of the Riksdag in preliminary inquiries concerning those officials cited in the previous paragraph.

Article 11

The Ombudsmen are to submit, by 15 November at the latest, each year a printed report on the discharge of their office covering the period from 1 July of the preceding year until the following 30 June. This report is to contain an account of the actions which have been taken by virtue of paragraph 1 of Article 4, paragraphs 2 - 4 of Article 6, and Article 7, together with other significant decisions published by the Ombudsmen. The report is also to contain a survey of their activities in other respects.

Organisation

Article 12

In accordance with 8.11 of the Riksdag Act, the Chief Parliamentary Ombudsman is the

International References for the Establishment of Ombuds Institutions

administrative head and decides on the overall direction activities are to take. In his administrative directives he is to issue regulations about the organisation of these activities and the allocation of cases among the Ombudsmen.

The Chief Parliamentary Ombudsman is responsible for ensuring that internal audits of the Institution take place. Internal audits are to comprise independent review of the Institution's internal management and monitoring procedures and its compliance with the requirements relating to its financial accounting. This audit is to be conducted in compliance with good practice for internal auditing.

The Parliamentary Ombudsmen adopt the audit plan for their operations after consultation with the National Audit Office.

Article 13

The activities of the Ombudsmen are to be administered by an Ombudsmen's secretariat (Ombudsmannaexpedition), which is to employ an Administrative Director, Heads of Division and other administrative staff as laid down by the Riksdag. To the extent needed, and insofar as funds are available, the Chief Parliamentary Ombudsman may appoint other staff, experts and referees. The Chief Parliamentary Ombudsman is to decide on the duties assigned to the staff.

The Administrative Director is to direct the work of the secretariat, as subordinate to the Chief Parliamentary Ombudsman, and is otherwise to afford the Ombudsmen such assistance as they may require.

Article 14

In addition to these instructions and those laid down in his administrative directives, the Chief Parliamentary Ombudsman is to issue the rules and regulations needed for the work of the secretariat.

The Chief Parliamentary Ombudsman is to consult the Committee on the Constitution on organisational issues of importance.

Before consultation with the Committee on the Constitution, an Ombudsman is to consult the Chief Parliamentary Ombudsman.

Article 15

Irrespective of the import of the administrative directives, the Chief Parliamentary Ombudsman may make a specific decision allocating a particular case or group of cases to himself or one of the other Ombudsmen.

In addition, the Chief Parliamentary Ombudsman may in the administrative directives or through some other decision authorise

1. officials within the Ombudsmen's secretariat to take measures in preparing a case,
2. officials to carry out inspections, without, however, the right while doing so to make comments or other pronouncements on behalf of the Ombudsman, and also
3. the Administrative Director to make administrative decisions, but not however concerning the appointment of heads of division.

The Chief Parliamentary Ombudsman is to decide whether a Deputy Ombudsman is to serve as an Ombudsman. A Deputy Ombudsmen may be appointed to serve if an Ombudsman is prevented by a considerable period of illness or on some other special grounds from performing his duties, or if a need arises for the services of a Deputy Ombudsman for some other reason. Act (1995:404).

Article 16

When the Chief Parliamentary Ombudsman is on holiday or is prevented from discharging his duties, of the other Ombudsman the one with the longest period of service is to act as his deputy. If two or more of the Ombudsmen have served for the same length of time, the oldest is to take precedence. Act (1995:404).

Complaints

Article 17

Complaints should be made in writing. The written complaint should indicate which authority the complaint is made about, the action which the complainant is referring to, the date of the action, together with the name and address of the complainant. If the complainant

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possesses a document which is of significance in dealing with and assessing the case, this should be appended.

A person who has been deprived of his liberty may write to the Ombudsmen, without being prevented by the restrictions on sending letters and other documents which may apply to him.

At the complainant's request, confirmation is to be issued by the secretariat of receipt of the complaint.

General regulations about the treatment of cases

Article 18

If an issue arising from a complaint is of such a nature that it can appropriately be investigated and appraised by an authority other than the Ombudsman, and if that authority has not previously reviewed the matter, the Ombudsman may refer the complaint to the authority for action. Complaints may, however, only be referred to the Chancellor of Justice after prior agreement.

If a complaint concerns an official who is a member of the Swedish Bar Association, and if the issue raised by the complaint is such that it can, in accordance with the fourth paragraph of 8.7 of the Code of Judicial Procedure, be appraised by a body within the Bar Association, the Ombudsman may refer the complaint to the Association for action.

Article 19

The Ombudsmen shall inform a complainant without delay as to whether his complaint has been rejected, filed, referred to some other agency, in accordance with Article 18, or has been made the subject of an inquiry.

Article 20

The Ombudsmen should not initiate inquiries into circumstances which date back two or more years, unless there are exceptional grounds for doing so.

Article 21

The Ombudsmen are to carry out the investigative measures required in appraising complaints and other cases.

When the Ombudsmen, in accordance with the stipulations of the Instrument of Government, request information and statements in cases other than those in which it has been decided to institute a preliminary inquiry, they may do so on penalty of fine not exceeding 10,000 Swedish Crowns. The Ombudsmen may impose such a penalty, if incurred.

If there are ground for suspecting that an official subject to the regulations about disciplinary measures in the Act on Official Employment (1994:260), is guilty of misconduct for which disciplinary measures should be invoked, and there is reason to fear that a written caution, as laid down in the article 17 of that Act, cannot be issued to him within two years of the misconduct, the Ombudsmen may issue a corresponding caution. This provision is also to apply to those who, by virtue of other statutes, are also subject to regulations on disciplinary measures and to cautions and corresponding notification.

When an Ombudsman is present at the deliberations of a court or other public authority, he does not have the right to express an opinion. Act (1997:561).

Article 22

An Ombudsman may authorise some other person to administer an inquiry which he has decided to initiate and to institute and prosecute legal proceedings he has decided on, unless these measures concern a member of the Supreme Court or the Supreme Administrative Court.

A decision to appeal a judgement or a decision to a superior court may only be made by an Ombudsman.

In cases referred to in Article 7, the Ombudsman may appoint an official on the Ombudsmen's staff to prosecute the legal proceedings on behalf of the Ombudsman.

In cases referred to in the third and fourth paragraphs of Article 6, the Ombudsmen may authorise officials on the Ombudsmen's staff to undertake action required.

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Article 23

Cases are concluded after oral presentation, for which an official on the staff of the ombudsmen's secretariat or specially appointed for the task is responsible. Decisions to reject a case or file it, can, however, be made without such presentation. The Ombudsman may also conclude other cases without oral presentation if there are exceptional grounds for doing so.

Documents that have been submitted to the Parliamentary Ombudsman in connection with a case may not be returned until the case has been concluded. If in such a case an authority is deprived of the original document, this may be returned subject to the submission of a certified copy of the document. Act (1994:1649)

Article 24

A journal is to be kept for all cases and for the actions taken in connection with them.

Documentary records for every decision are to be kept at the Ombudsmen's secretariat showing who made the decision, who was responsible for the oral presentation and the date and content of the decision.

A register is to be kept of specially designated decisions. Written records are to be kept during inspections and when needed for other reasons.

Miscellaneous regulations

Article 25

When the annual report is submitted to the Riksdag, journals, written records and registers covering the same period are to be presented at the same time to the Committee on the Constitution.

Article 26

The Ombudsmen's secretariat is to be open to the public during the hours decided on by the Chief Parliamentary Ombudsman.

Article 27

Documents are to be issued free of charge, unless otherwise justified for special reasons.

If a charge is to be made, it should be fixed according to the regulations in force for public authorities in general.

No appeal may be made against a decision to impose a charge.

The revenue from charges is at the disposal of the Parliamentary Ombudsmen.

Article 28

The Chief Parliamentary Ombudsman appoints officials within the Ombudsmen's secretariat and other staff, insofar as he has not delegated these tasks, as laid down in Article 15, to the Administrative Director.

Article 29

Regulations concerning appeal against decisions in matters of appointment to posts or otherwise affecting staff within the Ombudsmen's secretariat, are laid down in the Regulations for Appeal for the Riksdag and its Agencies.

The Netherlands

National Ombudsman Act (1981)

Act of 4 February 1981 (Bulletin of Acts and Decrees 1981, 35), most recently amended by Act of Parliament of 12 May 1999 (Bulletin of Acts and Decrees 1999, 214).

We Beatrix, by the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc. ...

Greetings to all who shall see or hear these presents! Be it known:

Whereas We have considered that the need exists for special provision for investigating the way in which government has acted in a particular matter towards the individual citizen and that it is desirable in this connection to proceed to the establishment of the office of National Ombudsman and to the amendment of certain Acts;

We, therefore, having heard the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

Definitions

Section 1

In this Act:

- a. Ombudsman means: the National Ombudsman referred to in section 2;
- b. public servant means: a public servant, a former public servant, a person employed by an administrative authority under a contract of employment governed by civil law, a person formerly so employed, or a conscript either before

or after termination of the period of compulsory military service, and other persons working or having formerly worked under the responsibility of an administrative authority.

Section 1a

- 1) This Act shall apply to the actions of the following administrative authorities:
 - a. Our Ministers;
 - b. the administrative authorities of the provinces, municipalities, water boards and cooperation areas under the Joint Regulations Act designated in accordance with section 1b;
 - c. administrative authorities charged by or pursuant to a statutory provision with duties relating to the police, in relation to the performance of those duties;
 - d. the administrative authorities of the provinces, municipalities, water boards and cooperation areas in relation to the actions of investigating officers employed by them;
 - e. other administrative authorities, unless they have been excluded by order in council.
- 2) Lapsed.
- 3) Subsection 1 notwithstanding, this Act shall not apply to the actions of the Equal Treatment Commission, as referred to in the Equal Treatment Act.

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- 4) An action performed by a public servant during the exercise of his duties shall be deemed to be an action of the administrative authority under whose responsibility he is working.

Section 1b

- 1) The administrative authorities of the provinces, municipalities, water boards and cooperation areas under the Joint Regulations Act to which this Act applies shall be designated by ministerial order.
- 2) Designation as referred to in subsection 1 shall be granted by Our Minister of the Interior at the request of the executive of the relevant province, municipality, water board or cooperation area. At a request of or on behalf of the provinces or water boards their respective designation shall take place simultaneously.
- 3) A request for designation shall be submitted to Our Minister of the Interior before 1 July in the year preceding that in which designation is to take effect. Our Minister shall immediately confirm receipt of such a request.
- 4) Designation of eligible administrative authorities shall take place on 1 January of the year in question. Nevertheless, Our Minister of the Interior may order designation to take effect as of another date if there are compelling reasons to do so. The designation order shall be published in the Government Gazette.
- 5) Designation shall be valid for a period of four years. This shall on each occasion be extended for a period of two years, unless the executive of the province, municipality, cooperation area (under the Joint Regulations Act) or water board has requested the Minister of the Interior, before 1 January of the year preceding that in which the extension will take effect, to terminate designation. Our Minister shall immediately confirm receipt of such a request. The termination of designation shall be announced in the Government Gazette by Our Minister of the Interior.

Section 1c

- 1) The legal entity to which the administrative authority designated under section 1b belongs shall make a payment, the amount of which shall be established by Our Minister of the Interior, to cover the costs of making the National Ombudsman's services available to the authority in question.
- 2) Further rules shall be established by or pursuant to an order in council concerning:
 - a. the calculation of the payment to be made;
 - b. the way in which payment is to be made;
 - c. the date on which payment is to be made.

Section 2

- 1) There shall be a National Ombudsman.
- 2) The Ombudsman will be appointed by the Lower House of Parliament. In making an appointment, the Lower House shall take account, as it sees fit, of a recommendation made, after joint consultations, by the vice-president of the Council of State, the president of the Supreme Court and the president of the Netherlands Court of Audit containing the names of at least three persons.
- 3) The appointment shall be for a term of six years.
- 4) If the Lower House wishes to re-appoint the current Ombudsman, it may set aside the second sentence of subsection 2.
- 5) If it proves to be impossible for the Lower House to appoint a new Ombudsman in time, the Lower House shall provide for the temporary occupation of the office of Ombudsman. Section 10, 5th to 7th subsection shall apply mutatis mutandis.

Section 3

- 1) The Lower House shall terminate the employment of the Ombudsman at the commencement of the first month following that in which he reaches the age of sixty-five.

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- 2) The Lower House shall also terminate the employment of the Ombudsman:
- a. at his request;
 - b. if he is permanently unable to carry out his duties because of illness or disability;
 - c. if he accepts an office or post declared by this Act to be incompatible with the office of Ombudsman;
 - d. if he loses Dutch citizenship;
 - e. if he is convicted of an offence, or is deprived of his liberty by a final and conclusive court judgement;
 - f. if he has been made the subject of a guardianship order, has been declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium for the payment of his debts or has been imprisoned for non-payment of debt by a final and conclusive court judgement;
 - g. if, in the opinion of the Lower House of Parliament, he has as a result of his acts or omissions seriously undermined the confidence placed in him.

Section 4

- 1) The Lower House shall suspend the Ombudsman if:
- a. he is remanded in custody;
 - b. he is convicted an offence or deprived of his liberty by a court judgement which has not yet become final and conclusive;
 - c. he is made the subject of a guardianship order, or is declared bankrupt, has agreed to a debt rescheduling arrangement, has been granted a moratorium on the payment of his debts or has been imprisoned for non-payment of debt by a court judgement which has not yet become final and conclusive.
- 2) The Lower House may suspend the Ombudsman if he is the subject of a preliminary judicial examination instituted in respect of an offence, or if there is a strong suspicion that facts or circumstances exist

which could lead to dismissal, other than those referred to under section 3, subsection 2 (b).

- 3) In the case referred to in subsection 2 of this section the suspension shall end after three months. The Lower House may however extend the suspension for periods of up to three months at a time.
- 4) The Lower House shall lift the suspension as soon as the reasons for suspension cease to exist.
- 5) The Lower House may order, when suspending the Ombudsman, that he will receive no salary, or only a specified part of his salary, during his suspension.
- 6) If the suspension ends otherwise than by dismissal, the Lower House may decree that all or a specified part of the salary the Ombudsman has not received shall be paid to him.

Section 5

- 1) The Ombudsman may not:
- a. be a member of a public body for which elections take place in a manner prescribed by law;
 - b. hold public office for which he receives a fixed salary or remuneration;
 - c. be a member of a permanent government advisory body;
 - d. act as an advocate, solicitor, or notary.
- 2) The Ombudsman shall not hold any position which is incompatible with the proper performance of his official duties or with his impartiality and independence or with public confidence therein.

Section 6

The provisions of the General Pensions (Holders of Political Office) Act shall apply to the Ombudsman, in such a way that he is treated as a member of the Lower House of Parliament, but that his income is settled according to section 9 of the said Act.

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Section 7

We shall lay down by order in council governing entitlements in the event of illness, and the other rights and duties of the Ombudsman which pertain to his legal status, insofar as these are not prescribed by statute law.

Section 8

Before accepting office the Ombudsman shall swear on oath or solemnly affirm in the presence of the Speaker of the Lower House of Parliament:

- a. that he has not given or promised anything on any pretext whatsoever to any person, either directly or indirectly and either in his own name or that of any other person, to obtain his appointment, and that he has not accepted and will not accept any present or any promise from any person, either directly or indirectly, to do or to refrain from doing anything in the exercise of his office;
- b. to observe faithfully the Constitution.

Section 9

- 1) At the request of the Ombudsman the Lower House shall if necessary appoint one or more persons as Deputy Ombudsman. For this purpose, the Ombudsman shall draw up a recommendation containing the names of at least three persons.
- 2) Any Deputy Ombudsman shall be appointed for the term of office of the Ombudsman requesting his appointment. On the recommendation of the new Ombudsman the Lower House may extend the term of office of the Deputy Ombudsman by a period not exceeding six months.
- 3) If the Lower House wishes to re-appoint a Deputy Ombudsman, it may stipulate that second sentence of subsection 1.
- 4) Sections 3 to 8, 18 to 24 and 27, subsection 5 shall apply mutatis mutandis to a Deputy Ombudsman.
- 5) The Ombudsman shall determine the activities of the Deputy Ombudsman.

- 6) The Ombudsman may stipulate that the powers referred to in the sections 25, 26, 27, subsection 1 to 4, and 28, subsection 3, may also be exercised by a Deputy Ombudsman. The Ombudsman may draw up directions for the exercise of those powers.

Section 10

- 1) The Ombudsman shall make arrangements for his replacement by a Deputy Ombudsman, in case he is temporarily unable to perform his duties.
- 2) If no Deputy Ombudsman is present or available, the Lower House shall provide for a substitute as soon as possible. In such cases, substitution will end as soon as the Ombudsman is able to resume his duties, or, if the Ombudsman has been suspended, when the suspension is lifted.
- 3) If the Ombudsman dies or is removed from his office under section 3, the Deputy Ombudsmen will stay on, the provisions of section 9, subsection 2, sentence one notwithstanding, until the date on which a new Ombudsman takes up his duties. In the event of such death or removal from office, the Lower House shall provide, as soon as possible, for the office of Ombudsman to be occupied temporarily by a Deputy Ombudsman.
- 4) If no Deputy Ombudsman is present or available, the Lower House shall provide for the office of Ombudsman to be occupied temporarily by a substitute as soon as possible.
- 5) The replacement shall end automatically when a new Ombudsman takes up his duties.
- 6) Section 2, subsection 2, second sentence and subsections 3 and 4, section 3, subsection 1, and sections 6 and 9 of this Act shall not apply to the person deputising or substituting for the Ombudsman pursuant to subsections 2 en 4.
- 7) If the person deputising or substituting for the Ombudsman as referred to in subsection 6 holds or is about to hold an office or membership as referred to in section 5, subsection 1, (b) and (c), the

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office or membership shall automatically be suspended for the period in which he is deputising or substituting.

Section 11

- 1) The Ombudsman shall be provided with an office.
- 2) The personnel of the office shall be appointed, promoted, suspended and dismissed by Us on the recommendation of the Ombudsman.
- 3) We shall decide in which cases members of the office personnel may be appointed, promoted, suspended and dismissed by the Ombudsman.

The investigation

Section 12

- 1) Any person has the right to request the Ombudsman in writing to investigate the way in which an administrative authority has acted towards a natural person or legal entity in a particular matter, unless more than a year has elapsed since the action in question. If the action in question is submitted to the judgement of a judicial tribunal or is referred for judgement to another body pursuant to a statutory provision of administrative law within one year of the date on which it took place, the term of one year shall end one year after the date on which the court gives a judgement from which no appeal lies, or after the proceedings have ended in some other way.
- 2) Before submitting the petition referred to in subsection 1, the petitioner shall submit a complaint about the action to the appropriate administrative authority, unless this cannot reasonably be expected of him. If the complaint was submitted within a period of one year after the action took place, the term referred to in subsection 1 shall end one year after the notification by the administrative authority of the findings of the investigation.
- 3) The petition should contain:
 - a. the name and address of the petitioner;

- b. as clear as possible a description of the action concerned and the name of the person whose actions are complained of and the name in relation to whom the action took place;

- c. the grievances relating to the action;

- d. the way in which a complaint was submitted and if possible the findings of the investigation of the complaint by the relevant administrative authority.

- 4) If the petition is couched in a foreign language and the proper processing of the complaint makes a translation necessary, the Ombudsman may decide not to deal with the petition, provided the petitioner has had the opportunity to supply a translation of the petition within a period determined by the Ombudsman.

- 5) Unless section 16 applies, the Ombudsman shall be entitled, and, unless section 14 applies, shall also be grant a petition as referred to in subsection 1.

Section 13

If the Ombudsman believes that some other statutory remedy is available to the petitioner under administrative law regarding the action complained of in the petition, the Ombudsman shall refer the petitioner forthwith to the competent authority and shall submit the petition to that body after the date of receipt has been noted on it. For the purposes of the rules governing the remedy available, the petition shall be deemed to satisfy the provisions of such rules governing the way in which the petition should be lodged. Moreover, the date of receipt of the petition by the Ombudsman shall be deemed to be the date on which proceedings are instituted before the body referred to in such rules. The said body shall allow the petitioner thirty days (from the date of notification), to supplement or amend the petition in accordance with the relevant rules and to pay such fees as may be owed for hearing of the case.

Section 14

The Ombudsman shall not be obliged to institute or to continue an investigation as referred to in section 12, subsection 1, if:

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- a. the petition is filed too late or does not meet the requirements listed in section 12, subsection 3 and 4;
- b. the petition is manifestly unfounded;
- c. the interest of the petitioner or the seriousness of the action is manifestly insufficient;
- d. the petitioner is not the person in relation to whom the action in question took place;
- e. a petition concerning the same act is either being considered by himself, by a parliamentary committee empowered to deal with petitions, drawn from the Upper or Lower House or from the States General in joint session, or - unless a new fact or a new circumstance has come to light which might justify a different evaluation of the said action - has been dealt with by him or the parliamentary committee concerned has presented its conclusions on the petition to the Upper or Lower House of Parliament or to the States General in a joint session;
- f. a petition relating to the same action is being dealt with or has been dealt with by an independent complaints body pursuant to a statutory complaints provision;
- g. a statutory remedy under administrative law was available to the petitioner but was not used;
- h. judgement has been given by a judicial tribunal other than pursuant to a statutory provision of administrative law;
- i. the requirements of section 12, subsection 2 have not been met, unless it cannot reasonably be expected of the petitioner that he should await the outcome of the processing of the complaint by the administrative authority;
- j. if a case is pending before a judicial tribunal concerning an action by an administrative authority, which act is closely related to the substance of the petition, or if such a case is pending before any other body pursuant to a statutory provision of administrative law.
- k. if the petition relates to an action which is closely related to an issue concerning which proceedings are pending before a court or tribunal other than pursuant to a statutory provision of administrative law.

Section 15

Unless section 16 applies, the Ombudsman shall be entitled to institute an investigation on his own initiative into the way in which an administrative authority has acted in a particular matter.

Section 16

The Ombudsman shall not be entitled to institute an investigation as referred to in sections 12, subsection 1, or 15:

- a. concerning matters of general government policy, including general policy on law enforcement or the general policy of the administrative authority in question;
- b. concerning generally binding regulations;
- c. if a statutory remedy is available under administrative law in respect of the action in question, unless section 6:12 of the General Administrative Law Act is applicable, or proceedings have been instituted to obtain such a remedy;
- d. if proceedings concerning the action in question have been instituted before a judicial body other than pursuant to a statutory provision of administrative law, or if appeal lies from a judgement given in such proceedings;
- e. if a judgement has been given by a judicial body in respect of the action in question pursuant to a statutory provision of administrative law;
- f. in matters relating to taxes and other impositions if a statutory remedy under administrative law was available in respect of the action in question;

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- g. concerning actions which are subject to the jurisdiction of the courts.

Section 17

- 1) If the Ombudsman decides not to grant a petition to institute an investigation or not to continue an investigation on the grounds referred to in sections 14 or 16 he shall inform the petitioner as soon as possible in writing, giving his reasons. In the event that he does not continue an investigation, he shall also inform the administrative authority and, where appropriate, the public servant in question. Having regard to the provisions of subsection 3, he shall take into account the last sentence of section 19, subsection 4, of this Act and section 10 of the Government Information (Public Access) Act.
- 2) If, pursuant to the provisions of section 14 (i), the Ombudsman decides not to institute an investigation or not to continue an investigation, he shall inform the petitioner the possibility of notifying the administrative authority, agency or department or the company operating under the responsibility of that body, or the public servant concerned, of his complaints regarding the way in which that body or public servant has acted, giving that body or public servant an opportunity to explain its or his point of view.
- 3) The Ombudsman shall agree to a request by any person for a copy of or excerpt from the written statement referred to in subsection 1. The Civil Cases (Fees) Act and the provisions made pursuant thereto shall apply mutatis mutandis to the decision as to whether these shall be provided for a fee or free of charge.

Section 18

- 1) The Ombudsman shall give the administrative authority, the person responsible for the action in question, and in the case referred to in section 12, subsection 1, the petitioner, the opportunity to explain their point of view either in writing or verbally and, at the discretion of the Ombudsman, either in each other's presence or otherwise.
- 2) The parties concerned may be represented or assisted by counsel. The Ombudsman

may refuse to hear as representative certain persons who make it their business to give legal advice, but who are not advocates or procurators litis.

Section 19

- 1) The administrative authority, the person responsible for the action in question, witnesses and the petitioner shall provide the Ombudsman with the information needed by him for his investigation, and must appear in person before him if so requested. The same obligations rest on any official body, on the understanding that the body itself decides which of its members is to discharge its obligations, unless the Ombudsman designates one or more members. The persons concerned may be assisted by counsel.
- 2) The obligation to appear before the Ombudsman shall not apply to Our Ministers. If a Minister does not appear in person, he shall appoint a representative.
- 3) The Ombudsman may obtain information concerning the policy conducted under the responsibility of a Minister or an administrative authority from the public servants concerned only through the Minister or the administrative authority in question.
- 4) The persons whose attendance is required under subsection 1 may be exempted from giving information on the grounds that they have a duty of confidentiality by virtue of their office or profession, but only regarding matters which have been disclosed to them in such a capacity. Public servants may refuse to give information on the grounds of the duty of confidentiality imposed by the Central and Local Government Personnel Act, the 1931 Military Personnel Act or the 1993 Police Act only if supplying the information required would be contrary to any other statutory provision concerning confidentiality or to the interests of the State. The Ombudsman may request the body through which information must be sought in accordance with subsection 3 to submit written confirmation to substantiate any claim that a person is entitled to exemption. The body may decide that the duty of

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confidentiality will be waived in respect of information supplied to the Ombudsman on condition that the information remains secret.

- 5) The body through which information is sought may be represented when the public servants are interviewed.

Section 20

- 1) The Ombudsman shall be entitled to entrust certain activities to experts. He shall also be entitled to obtain the assistance of experts and interpreters to further his investigations. Persons summoned as experts or interpreters shall be obliged to appear before the Ombudsman and render their services.
- 2) Section 19, subsections 3, 4 and 5 of shall apply *mutatis mutandis* to experts who are also public servants.
- 3) Experts and interpreters shall have a duty of confidentiality in respect of matters that have become known to them in the course of their duties.

Section 21

- 1) Summonses to appear under sections 19 and 20 shall be sent by registered letter.
- 2) The Ombudsman may order that persons who fail to appear despite an official summons to attend, shall be brought before him by the police to discharge their obligations.

Section 22

- 1) The Ombudsman may order that witnesses shall not be heard and that interpreters shall not be permitted to carry out their duties until they have taken an oath or made a solemn affirmation.
- 2) In such cases, they shall take the oath, or make the solemn affirmation, in the presence of the Ombudsman; if they are heard as a witness they shall undertake to speak the whole truth and nothing but the truth; the interpreters shall undertake to carry out their duties meticulously.

- 3) The experts shall be obliged to perform their task impartially, and to the best of their ability.

Section 23

- 1) Persons summoned to appear under this Act shall receive, on request, payment of their travel and accommodation expenses and compensation for lost working hours from State funds in accordance with the provisions of the Civil Cases (Fees) Act and the provisions made pursuant thereto.
- 2) Unless provided otherwise for by order in council, persons referred to in subsection 1 who are public servants shall not receive any payment as referred to in section 1 if they are summoned to appear in their capacity as public servant.
- 3) The Ombudsman shall determine the amount to be paid in accordance with this section.

Section 24

- 1) On the written request of the Ombudsman, documents or copies of documents used in performance of the government's duties in the matter at issue shall be submitted to him for the purposes of the investigation. Section 19, subsections 3 and 4, shall apply *mutatis mutandis*.
- 2) If he considers it necessary in the interests of the investigation the Ombudsman may enter without consent any place other than a dwelling where the administrative authority responsible for the action under investigation carries out its duties. He may enter a dwelling only with consent of the occupier.
- 3) Our Ministers may deny the Ombudsman entry to certain places if in their opinion entry would detrimental the safety of the state.

Section 25

- 1) Before closing the investigation, the Ombudsman shall communicate his findings to the relevant administrative authority in writing and, in appropriate cases, to the public servant whose actions have been the

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subject of the investigation, and in the case referred to in section 12, subsection 1, to the petitioner.

- 2) The Ombudsman shall give the administrative authority, the public servant and the petitioner the opportunity to comment on his findings within a period fixed by him.

Section 26

- 1) The Ombudsman shall determine whether or not the administrative authority acted properly in the matter under investigation.
- 2) If a judicial tribunal has given judgement, other than pursuant to a statutory provision of administrative law, in respect of the action to which the Ombudsman's investigation relates, the Ombudsman shall take into account the legal grounds on which the judgement was partly or wholly based.

Section 27

- 1) Once an investigation has been closed the Ombudsman shall draw up a report containing his findings and his decision. Having regard to the provisions of subsection 4, he shall take into account the last sentence of section 19, subsection 4, of this Act and the provisions of section 10 of the Government Information (Public Access) Act.
- 2) The Ombudsman shall send his report to the administrative authority concerned and, where appropriate, to the public servant whose actions have been investigated. If the investigation was carried out in response to a petition as referred to in section 12 he shall also send his report to the petitioner.
- 3) If he deems fit, the Ombudsman may notify the body concerned of any measures which he considers should be taken.
- 4) The Ombudsman shall provide anyone who makes a request to that end with a copy of or an extract from the report referred to in subsection 1. The Civil Cases (Fees) Act and provisions made pursuant thereto shall apply *mutatis mutandis* to the decision as to whether these shall be provided for a fee or free of charge. He shall also deposit a copy of the report for public inspection at a place to be designated by him.

- 5) In all other respects, the Ombudsman shall have a duty of confidentiality with regard to matters that become known to him in the performance of his duties, insofar as the nature of such matters makes this necessary.

Section 28

- 1) The Ombudsman shall submit yearly a report of his activities to both Houses of Parliament and to Our Ministers. Section 10 of the Government Information (Public Access) Act shall apply *mutatis mutandis*, on the understanding that the Ombudsman may add items to be communicated confidentially to members of Parliament and Our Ministers.
- 2) The Ombudsman shall publish the report and make it generally available.
- 3) The Ombudsman may also notify both Houses of Parliament of his findings and decision immediately after closing an investigation, whenever he deems earlier communication necessary or whenever one of the Houses requests such information.

Transitional and final provisions

Section 29

Proposals for decrees implementing this Act shall be submitted to Us by Our Minister for Home Affairs.

Section 30

Section 12 shall not apply to actions performed by bodies designated by ministerial order as referred to in section 1b, prior to the date on which the said order came into force.

Section 30a

Up to one year following the entry into force of an order in council as referred to in section 1a, subsection 1(e), or on the expiry of a designation as referred to in section 1b, a petition as referred to in section 12 may be submitted to the National Ombudsman relating to an action of the administrative authority concerned which took place:

- 1) before the administrative authority concerned was granted exceptional status by

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an order in council as referred to in section 1a, subsection 1(e),or

- 2) before the designation of the administrative authority concerned as referred to in section 1b expired.

Section 31

This Act may be cited as the National Ombudsman Act.

Germany

State Act to Establish the Office of an Ombudsman in Rhineland-Palatinate (1974)

3 May 1974, as amended on 5 November 1974

1. Duties

- 1) The Ombudsman has the duty to strengthen the position of private individuals when they interact with public authorities by performing a role of legislative oversight over those public authorities under the parliamentary control of the State Parliament.
- 2) The Ombudsman acts in accordance with his or her duties under this Act if complaints addressed to the State Parliament or the Petitions Committee, or any other source provide him or her with reasonable grounds to believe that the settlement of citizens' matters by bodies under the parliamentary control of the State Parliament is or has been contrary to law or inefficient.
- 3) Complaints addressed to the State Parliament or the Petitions Committee shall be referred to the Ombudsman.

2. Right to submit complaints

- 1) Any person may apply by written or oral complaint to the Ombudsman to investigate a grievance, who shall accept these complaints on behalf of the State Parliament.
- 2) Where a letter written by a person imprisoned or otherwise restricted in his or her liberty is addressed to the Ombudsman, it shall be immediately forwarded unopened to the Ombudsman.

3. Limits of the right to investigate

- 1) The Ombudsman shall decide not to investigate because
 - a. there is no competence or legal basis in the matter for a State authority to intervene;
 - b. an investigation must not relate to pending legal proceedings or a judicial decision must not be reviewed; nothing in this Act shall, however, interfere with the right of the Ombudsman to investigate the behaviour of the bodies referred to under § 1. subsection 2) when they are involved in pending proceedings or the decision has become final and absolute;
 - c. the complaint is based on a decision that is final and aims at a revision or abrogation of judgement;
 - d. the case is the subject of a preliminary investigation conducted by a prosecutor; the Ombudsman may, however, decide to investigate if there was unreasonable delay in the dealing with the subject matter of the complaint;
 - e. the case is being or has been investigated in accordance with Article 91 of the State Constitution.
- 2) The Ombudsman may decide not to investigate because
 - a. the complaint does not state the full name or address of the petitioner or is illegible;

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- b. the complaint is trivial or incoherent;
 - c. the subject matter of the complaint relates to an offence;
 - d. the case referred to has already been examined and the complaint does not provide any further information.
- 3) If the Ombudsman decides not to investigate, he or she shall inform the citizen of his or her decision stating the reasons therefor and report the decision to the Petitions Committee; in case of subsection 1) a. he or she may refer the complaint to the appropriate body for consideration.

4. Powers

As permanent agent of the Petitions Committee, the Ombudsman is empowered to require that the State government, all State authorities, the bodies, institutions and foundations established under public law, insofar as they are subject to the control of the State, permit him or her

- a. to obtain oral and written information,
- b. to examine files and records,
- c. to gain access to the public institutions under their management.
- d. The Ombudsman has the same powers in matters where legal entities established under private law, non-incorporated associations, and natural persons are involved, insofar as they perform public activities under State jurisdiction. If the entities referred to under this section refuse to co-operate, the members of the Petitions Committee shall decide if they want to avail themselves of the rights vested in them by the Constitution in accordance with Article 90 a of the State Constitution.

5. Investigation

- 1) Prior to launching an investigation, the Ombudsman shall give the appropriate authority an opportunity to remedy the grievance. He or she shall seek a friendly solution. For this purpose, he or she may make a recommendation and state the reasons therefor; the recommendation shall

also be referred to the responsible Minister. The Ombudsman shall inform the Petitions Committee at its next session of the friendly solutions.

- 2) The appropriate authority shall report to the Ombudsman in due time or upon request upon the steps taken, the continuation and the outcome of the investigation.
- 3) Where no friendly solution can be found, the Ombudsman shall bring the complaint before the Petitions Committee and make a suggestion on how the case could be solved. Prior to forming a final opinion, the Petitions Committee may also instruct the Ombudsman to complement his or her investigations.
- 4) The Ombudsman may decide not to act in accordance with subsection (1), if the facts of the case and the legal status suggest that the case should be examined by a court; § 3. subsection 3) of this Act applies analogously.
- 5) The Ombudsman shall inform the citizen in writing of the steps taken by his or her office or the appropriate authority.

6. Assistance

The State government, all State authorities, and the bodies, institutions and foundations established under public law and placed under State jurisdiction shall render the Ombudsman assistance in carrying out all enquiries he or she deems necessary.

7. Presence and duty to report

- 1) The State Parliament and the Petitions Committee may request the Ombudsman's presence at any time.
- 2) The Ombudsman may take part in all sessions held by the Petitions Committee. He or she must be heard at his or her request.
- 3) The Ombudsman shall make a written overall report annually to the State Parliament upon the exercise of his or her functions by 31 March. He or she must be present when the annual report is discussed by the State Parliament and the individual committees and is obliged to report on demand.

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- 4) At the request of the Petitions Committee, of a parliamentary party or of one fifth of the members of the State Parliament, the Ombudsman must report at any time to the Petitions Committee upon individual cases.

8. Confidentiality

- 1) The Ombudsman's obligation to maintain confidentiality in respect of all matters that come to his or her knowledge in performing his or her duties under this Act stretches beyond the end of his or her term of office. The Ombudsman is pledged to the same secrecy concerning all information received by him or her as Ombudsman and concerning facts that are obvious or insignificant to such an extent that they do not require confidentiality.
- 2) Even after leaving his or her office, the Ombudsman must not, without foregoing consent, give evidence in a court or out of court or make statements. The consent is given by the Speaker of the State Parliament after hearing the citizen concerned and the member of the State government responsible in the matter.
- 3) Nothing in this Act shall affect the legal obligation to prosecute an offence or avert an imminent danger to the existence of the free democratic basic order.

9. Election and term of office

- 1) The State Parliament shall elect the Ombudsman by secret ballot with the majority of its members. There is no debate.
- 2) Every German who is eligible to the House of Representatives and has attained the age of thirty five years is eligible for election.
- 3) The Ombudsman shall hold office for a term of eight years. He or she may be reelected.

10. Employer/employee relationship

- 1) In accordance with this Act, the Ombudsman is a member of the public service of the State Rhineland-Palatinate.
- 2) The Ombudsman becomes a member of the public service upon delivery of the

appointment instrument by the Speaker of the State Parliament. The Ombudsman is sworn to office by the State Parliament.

- 3) The Ombudsman ceases to be a member of the public service
 - a. if he or she is no longer eligible for office,
 - b. if his or her term of office terminates,
 - c. if he or she dies,
 - d. if he or she is removed from office (§ 11. subsection 1)),
 - e. if he or she resigns the office (§ 11. subsection 2)),
 - f. if a new Ombudsman is appointed because the Ombudsman is impeded (§ 13. subsection 2))
- 4) The Ombudsman must not be member of a government or legislative assembly of the Federation or a State, or of a representative body at a municipal level. No person while holding office shall engage in any other occupation, business or profession or be a participant in the management or administration of an enterprise operating for profit.

11. Removal and resignation

- 1) The State Parliament may remove the Ombudsman from office with a majority of two thirds of its members upon a motion of a parliamentary party or of one third of its members. The members of the State Parliament shall vote on the motion of removal at the earliest within two weeks and at the latest within four weeks of the motion's arrival at the office of the Speaker of the State Parliament.
- 2) The Ombudsman may, at any time, tender his resignation. The Speaker of the State Parliament shall pronounce the resignation.

12. The office of the Ombudsman

- 1) The Ombudsman shall have his or her office at the State Parliament.
- 2) The Ombudsman may demand such employees as he or she considers necessary

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for the efficient operation of his or her office. The Ombudsman is empowered to exercise supervision over his or her staff. Upon his or her recommendation, the officials are appointed and dismissed by the Speaker of the State Parliament.

- 3) The Ombudsman's budget shall be charged to the budget of the State Parliament.

13. Prevention from holding office

- 1) If the Ombudsman is prevented from performing the functions of his or her office, the senior member of the senior service shall act for him or her until the Ombudsman is able to hold office again.
- 2) If the Ombudsman is prevented from performing the functions of his or her office for more than six months, the State Parliament may elect a new Ombudsman.

14. Remuneration

- 1) The Ombudsman shall receive the salary laid down in the grade B 9 of the German Higher Civil Service, including generally granted allowances added to the basic salary, and a monthly expense allowance provided for in the budget. In addition, the Ombudsman is entitled, in analogy to the legal provisions applicable to civil servants, to be paid a local weighting allowance and dependent child's allowance, separation allowance, travelling and removal expenses, as well as allowances in the events of illness, birth and death.
- 2) The Ombudsman is also entitled to be annually paid an extra benefit in analogy to the State Act on the Grant of an Annual Extra Benefit (Extra Benefit Act) of 19 November 1970 (GVBl. p. 407), as amended by the State Act of 15 December 1972 (GVBl. p. 373), BS 2032-16, as amended.
- 3) In all other instances sections 10 to 18 of the State Act on the Legal Relations of the Members of the State Government of Rhineland-Palatinate of 17 July 1954 (GVBl. p. 91), as amended by the State Act of 24 February 1971 (GVBl. p. 58), BS 1103-1, shall apply analogously with the provision that the term of office shall not be of four years (§ 12 of the Minister Act) but of eight years.

(...)

16. List of posts

Subject to the consent of the Budget and Finance Committee of the State Parliament, the Minister of Finances is empowered for the financial year 1974 to create as many posts as are necessary for the enforcement of this Act. The next budget proposal shall determine whether the number of posts remains the same or not.

17. Entry into force

This Act enters into force on the day after its publication.

Notes:

§ 15: Amendment Regulation, incorporated into BS 1101-1

§ 17: Published on 13 May 1974

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Part III:
Legislation for General
Ombuds Institutions

South Africa

The Public Protector Act 23 (1994)

As amended by

Public Service Laws Amendment Act 47 of 1997

Public Protector Amendment Act 113 of 1998

Promotion of Access to Information Act 2 of 2000

Public Protector Amendment Act 22 of 2003

ACT

To provide for matters incidental to the office of the Public Protector as contemplated in the Constitution of the Republic of South Africa, 1996; and to provide for matters connected therewith.

Preamble

WHEREAS sections 181 to 183 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provide for the establishment of the office of Public Protector and that the Public Protector has the power, as regulated by national legislation, to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to have resulted in any impropriety or prejudice, to report on that conduct and to take appropriate remedial action, in order to strengthen and support constitutional democracy in the Republic;

AND WHEREAS sections 193 and 194 of the Constitution provide for a mechanism for the appointment and removal of the Public Protector;

AND WHEREAS the Constitution envisages further legislation to provide for certain ancillary matters pertaining to the office of Public Protector;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

1. (...)

1A. Establishment and appointment

- 1) There shall be a Public Protector for the Republic.
- 2) The President shall, whenever it becomes necessary, appoint a Public Protector in accordance with the provisions of section 193 of the Constitution.
- 3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who
 - a. is a Judge of a High Court; or
 - b. is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or
 - c. is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or
 - d. has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or

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e. has, for a cumulative period of at least 10 years, been a member of Parliament;

or

f. has acquired any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years.

4) The Public Protector shall not perform remunerative work outside his or her official duties.

2. Remuneration, vacancies in office and other terms and conditions of employment of Public Protector

1) The National Assembly shall refer to a committee of the National Assembly the

a. nomination of a person in terms of section 193 (5) (a) of the Constitution to be appointed as Public Protector;

b. nomination of a person in terms of section 2A (3) to be appointed as Deputy Public Protector;

c. consideration in terms of section 194 (1) (b) and (3) a. of the Constitution of the removal from office of the Public Protector;

d. consideration in terms of section 2A. 9) b. and 11. a. ii. of the removal from office of the Deputy Public Protector; and

e. consideration of any other matter that can be referred to such a committee in terms of the Constitution or this Act.

2) The remuneration and other terms and conditions of employment of the Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee: Provided that such remuneration

a. shall not be less than that of a judge of a High Court; and

b. shall not be reduced, nor shall the terms and conditions of employment be adversely altered, during his or her term of office.

3) The National Assembly or, if Parliament is not in session, the committee may allow a Public Protector to vacate his or her office

a. on account of continued ill-health; or

b. at his or her request: Provided that such request shall be addressed to the National Assembly or the committee, as the case may be, at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the National Assembly or the committee, as the case may be, allows a shorter period in a specific case.

4) If the committee allows a Public Protector to vacate his or her office in terms of subsection (3), the chairperson of the committee shall communicate that fact by message to the National Assembly: Provided that any decision taken by the committee in terms of this subsection must be ratified by the National Assembly.

5) The Public Protector may, at any time, approach the committee with regard to any matter pertaining to the office of the Public Protector.

2A. Appointment, remuneration and other terms and conditions of employment, vacancies in office and removal from office of Deputy Public Protector

1) The President, on the recommendation of the National Assembly, shall appoint a person as Deputy Public Protector for such period as the President may determine at the time of such appointment, but not exceeding seven years.

2) The Deputy Public Protector may at the end of his or her term of office be reappointed in terms of subsection (1) for one additional term.

3) The National Assembly shall recommend a person

a. nominated by the committee; and

b. approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the National Assembly.

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- 4) The Deputy Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who
 - a. is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or
 - b. is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or
 - c. has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or
 - d. has, for a cumulative period of at least 10 years, been a member of Parliament;or
 - e. has acquired any combination of experience mentioned in paragraphs a. to d., for a cumulative period of at least 10 years.
- 5) The remuneration and other terms and conditions of employment of the Deputy Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee.
- 6) The Deputy Public Protector shall have such powers as the Public Protector may delegate to him or her.
- 7) Whenever the Public Protector is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to the office of Public Protector is pending, the Deputy Public Protector shall perform such functions.
- 8) The provisions of section 2. 3) and 4) shall apply with the necessary changes in respect of the vacation of office of the Deputy Public Protector.
- 9) The Deputy Public Protector may be removed from office only on
 - a. the ground of misconduct, incapacity or incompetence;
 - b. a finding to that effect by the committee; and
 - c. the adoption by the National Assembly of a resolution calling for his or her removal from office.
- 10) A resolution of the National Assembly concerning the removal from office of the Deputy Public Protector must be adopted with a supporting vote of a majority of the members of the National Assembly.
- 11)
 - a. The President may suspend the Deputy Public Protector from office at any time after any complaint relating to the grounds referred to in subsection 9) against him or her has been received by the National Assembly, if the President deems the complaint against the Deputy Public Protector to be of such a serious nature as to make it inappropriate for him or her to perform his or her functions while the complaint is being investigated.
 - b. The President may suspend the Deputy Public Protector in terms of paragraph a. on such terms and conditions as the President may determine, including the suspension of the payment of his or her remuneration or the suspension of any other term or condition of his or her employment.
- 12) The President shall remove the Deputy Public Protector from office upon adoption by the National Assembly of the resolution calling for his or her removal.
- 13) If a vacancy occurs in the office of the Deputy Public Protector the President shall, subject to this section, as soon as possible, appoint another person to that office.

3. Staff of Public Protector

- 1) The Public Protector shall, subject to his or her directions and control, in the performance of his or her functions under this Act and the Constitution, be assisted by

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- a. the Deputy Public Protector; which such determination ceases to be of force shall be deemed to have been done validly; and
 - b. a suitably qualified and experienced person as Chief Administrative Officer, appointed by the Public Protector or seconded in terms of subsection 12, for the purpose of assisting the Public Protector in the performance of all financial, administrative and clerical functions pertaining to the office of the Public Protector; and
 - ii. any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date.
 - c. such staff, seconded in terms of subsection 12 or appointed by the Public Protector, as may be necessary to enable the Public Protector to perform his or her functions.
- 2) [Repealed]
- 3) A person referred to in subsection 1) c. shall have such powers as the Public Protector may delegate to him or her.
- 4) - 8) [Repealed]
- 9) The persons appointed by the Public Protector in terms of subsection 1) b. or c. shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Public Protector may determine.
- 10) In exercising his or her powers in terms of subsections 1) and 9), the Public Protector shall consult with the Minister of Finance.
- 11)
 - a. a document setting out the remuneration, allowances and other conditions of employment determined by the Public Protector in terms of this section, shall be tabled in the National Assembly within 14 days after such determination.
 - b. If the National Assembly disapproves of any determination such determination shall cease to be of force to the extent to which it is so disapproved.
 - c. If a determination ceases to be of force as contemplated in paragraph b.-
 - i. anything done in terms of such determination up to the date on
- 12) The Public Protector may, in the performance of the functions contemplated in subsection 1) b., at his or her request, be assisted by officers in the Public Service seconded to the service of the Public Protector in terms of any law regulating such secondment.
- 13) A member of the office of the Public Protector shall
 - a. serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice;
 - b. serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office: Provided that the committee may exempt the Deputy Public Protector and a person contemplated in section 7) 3. b. shall be exempted from the provisions of this paragraph.
- 14) No person, other than a person contemplated in section 7) 3, shall conduct an investigation contemplated in section 7 or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary interest or any other interest which might preclude him or her from performing his or her functions in a fair, unbiased and proper manner.
- 15) If any person fails to disclose an interest contemplated in subsection 14 and conducts or renders assistance with regard to an investigation contemplated in section 7, while having an interest in the matter being investigated, the Public Protector may take such steps as he or she deems necessary to ensure a fair, unbiased and proper investigation.

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4. Finances and accountability

- 1) The Chief Administrative Officer referred to in section 3 (1) (b)
 - a. shall, subject to the Public Finance Management Act, 1999 (Act 1 of 1999)
 - i. be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Public Protector;
 - ii. cause the necessary accounting and other related records to be kept; and
 - b. may exercise such powers and shall perform such duties as the Public Protector may from time to time confer upon or assign to him or her, and shall in respect thereof be accountable to the Public Protector.
- 2) The records referred to in subsection 1) a. ii. shall be audited by the Auditor-General.

5. Liability of Public Protector

- 1) The office of the Public Protector shall be a juristic person.
- 2) The State Liability Act, 1957 (Act 20 of 1957), shall apply with the necessary changes in respect of the office of the Public Protector, and in such application a reference in that Act to 'the Minister of the department concerned' shall be construed as a reference to the Public Protector in his or her official capacity.
- 3) Neither a member of the office of the Public Protector nor the office of the Public Protector shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act or the Constitution.

6. Reporting matters to and additional powers of Public Protector

- 1) Any matter in respect of which the Public Protector has jurisdiction may be reported to the Public Protector by any person

- a. by means of a written or oral declaration under oath or after having made an affirmation, specifying
 - i. the nature of the matter in question;
 - ii. the grounds on which he or she feels that an investigation is necessary;
 - iii. all other relevant information known to him or her; or
 - b. by such other means as the Public Protector may allow with a view to making his or her office accessible to all persons.
- 2) A member of the office of the Public Protector shall render the necessary assistance, free of charge, to enable any person to comply with subsection (1).
 - 3) The Public Protector may refuse to investigate a matter reported to him or her, if the person ostensibly prejudiced in the matter is
 - a. an officer or employee in the service of the State or is a person to whom the provisions of the Public Service Act, 1994 (Proclamation 103 of 1994), are applicable and has, in connection with such matter, not taken all reasonable steps to exhaust the remedies conferred upon him or her in terms of the said Public Service Act, 1994; or
 - b. prejudiced by conduct referred to in subsections 4) and (5) and has not taken all reasonable steps to exhaust his or her legal remedies in connection with such matter.
 - 4) The Public Protector shall, be competent
 - a. to investigate, on his or her own initiative or on receipt of a complaint, any alleged
 - i. maladministration in connection with the affairs of government at any level;
 - ii. abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;

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- iii. improper or dishonest act, or omission or offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money;
 - iv. improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or
 - v. act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;
- b. to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by
- i. mediation, conciliation or negotiation;
 - ii. advising, where necessary, any complainant regarding appropriate remedies; or
 - iii. any other means that may be expedient in the circumstances;
- c. at a time prior to, during or after an investigation
- i. if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or
 - ii. if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting there from or make any other appropriate recommendation he or she deems expedient to the affected public body or authority; and
- d. on his or her own initiative, on receipt of a complaint or on request relating to the operation or administration of the Promotion of Access to Information Act, 2000, endeavour, in his or her sole discretion, to resolve any dispute by
- i. mediation, conciliation or negotiation;
 - ii. advising, where necessary, any complainant regarding appropriate remedies; or
 - iii. any other means that may be expedient in the circumstances.
- 5) In addition to the powers referred to in subsection 4), the Public Protector shall on his or her own initiative or on receipt of a complaint be competent to investigate any alleged
- a. maladministration in connection with the affairs of any institution in which the State is the majority or controlling shareholder or of any public entity as defined in section 1 of the Public Finance Management Act, 1999 (Act 1 of 1999);
 - b. abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a function connected with his or her employment by an institution or entity contemplated in paragraph a.;
 - c. improper or unlawful enrichment or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in connection with the affairs of an institution or entity contemplated in paragraph a.; or
 - d. act or omission by a person in the employ of an institution or entity contemplated in paragraph a., which results in unlawful or improper prejudice to any other person.

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- 6) Nothing in subsections 4) and 5) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.
- 7) The Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged attempt to do anything which he or she may investigate under subsections 4) or 5).
- 8) The Public Protector or any member of his or her staff shall be competent but not compellable to answer questions in any proceedings in or before a court of law or anybody or institution established by or under any law, in connection with any information relating to the investigation which in the course of his or her investigation has come to his or her knowledge.
- 9) Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.
- all persons whose presence is not desirable, shall not be present at any proceedings pertaining to any investigation or part thereof.
- 2) Notwithstanding anything to the contrary contained in any law no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, the Deputy Public Protector or a person contemplated in subsection 3) b. during an investigation, unless the Public Protector determines otherwise.
- 3)

- a. The Public Protector may, at any time prior to or during an investigation, request any person
- i. at any level of government, subject to any law governing the terms and conditions of employment of such person;
- ii. performing a public function, subject to any law governing the terms and conditions of the appointment of such person; or
- iii. otherwise subject to the jurisdiction of the Public Protector, to assist him or her, under his or her supervision and control, in the performance of his or her functions with regard to a particular investigation or investigations in general.
- b.
- i. The Public Protector may designate any person to conduct an investigation or any part thereof on his or her behalf and to report to him or her and for that purpose such a person shall have such powers as the Public Protector may delegate to him or her.
- ii. The provisions of section 9 and of the regulations and instructions issued by the Treasury under section 76 of the Public Finance Management Act, 1999 (Act 1 of

7. Investigation by Public Protector

- 1)
- a. The Public Protector shall have the power, on his or her own initiative or on receipt of a complaint or an allegation or on the ground of information that has come to his or her knowledge and which points to conduct such as referred to in section 6. 4) or 5) of this Act, to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.
- b.
- i. The format and the procedure to be followed in conducting any investigation shall be determined by the Public Protector with due regard to the circumstances of each case.
- ii. The Public Protector may direct that any category of persons or

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1999), in respect of Commissions of Inquiry, shall apply with the necessary changes in respect of that person.

4)

- a. For the purposes of conducting an investigation the Public Protector may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in his or her possession or under his or her control which has a bearing on the matter being investigated, and may examine such person.
- b. The Public Protector or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated.

5) A direction referred to in subsection 4) a. shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Public Protector and shall be signed by the Public Protector and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorised thereto by the Public Protector.

6) The Public Protector may require any person appearing as a witness before him or her under subsection 4) to give evidence on oath or after having made an affirmation.

7) The Public Protector or any person authorised by him or her in writing may administer an oath to or accept an affirmation from any such person.

8) Any person appearing before the Public Protector by virtue of the provisions of subsection 4) may be assisted at such examination by an advocate or an attorney and shall be entitled to peruse such of the documents or records referred to in subsection 2) as are reasonably necessary to refresh his or her memory.

9)

a. If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

b.

i. If such implication forms part of the evidence submitted to the Public Protector during an appearance in terms of the provisions of subsection 4), such person shall be afforded an opportunity to be heard in connection therewith by way of giving evidence.

ii. Such person or his or her legal representative shall be entitled, through the Public Protector, to question other witnesses, determined by the Public Protector, who have appeared before the Public Protector in terms of this section.

10) The provisions of this section shall be applicable to any person referred to in subsection (9).

11) The Public Protector may make rules in respect of any matter referred to in this section which has a bearing on an investigation or in respect of any matter incidental thereto, provided that such rules must be published in the Government Gazette and tabled in the National Assembly.

7A. Entering upon premises by the Public Protector

1) The Public Protector shall be competent to enter, or authorise another person to enter, any building or premises and there to make such investigation or inquiry as he or she may deem necessary, and to seize anything on those premises which in his or her opinion has a bearing on the investigation.

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- 2) The premises referred to in subsection 1) may only be entered by virtue of a warrant issued by a magistrate or a judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.
- 3) A warrant contemplated in subsection 2) may only be issued if it appears to the magistrate, or a judge from information on oath or affirmation, stating
 - a. the nature of the investigation or inquiry;
 - b. the suspicion which gave rise to the investigation or inquiry; and
 - c. the need, in regard to the investigation, for a search and seizure in terms of this section, that there are reasonable grounds for believing that anything referred to in subsection 1) is on or in such premises or suspected to be on or in such premises.
- 4) A warrant issued in terms of this section may be issued on any day and shall be of force until
 - a. it has been executed;
 - b. it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
 - c. the expiry of three months from the day of its issue, whichever may occur first.
- 5)
 - a. Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.
 - b. The proviso to paragraph a. shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.
- 6) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.
- 7) Any person executing a warrant in terms of this section shall immediately before commencing with the execution
 - a. identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises; and
 - b. supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- 8) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the investigation or inquiry and that such information is necessary for the investigation or inquiry, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

8. Publication of findings

- 1) The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known

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to any person any finding, point of view or recommendation in respect of a matter investigated by him or her.

2)

- a. The Public Protector shall report in writing on the activities of his or her office to the National Assembly at least once every year: Provided that any report shall also be tabled in the National Council of Provinces.
- b. The Public Protector shall, at any time, submit a report to the National Assembly on the findings of a particular investigation if
 - i. he or she deems it necessary;
 - ii. he or she deems it in the public interest;
 - iii. it requires the urgent attention of, or an intervention by, the National Assembly;
 - iv. he or she is requested to do so by the Speaker of the National Assembly; or
 - v. he or she is requested to do so by the Chairperson of the National Council of Provinces.

2A)

- a. Any report issued by the Public Protector shall be open to the public, unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential. b. If the Public Protector is of the opinion that exceptional circumstances require that a report be kept confidential, the committee must be furnished with the reasons thereof and, if the committee concurs, such report shall be dealt with as a confidential document in terms of the rules of Parliament. c. For the purposes of this section, 'exceptional circumstances' shall exist if the publication of the report concerned is likely
 - i. to endanger the security of the citizens of the Republic;

- ii. to prejudice any other investigation or pending investigation;
- iii. disturb the public order or undermine the public peace or security of the Republic;
- iv. to be prejudicial to the interests of the Republic; or
- v. in the opinion of the Public Protector to have a bearing on the effective functioning of his or her office.

- 3) The findings of an investigation by the Public Protector shall, when he or she deems it fit but as soon as possible, be made available to the complainant and to any person implicated thereby.

9. Contempt of Public Protector

- 1) No person shall
 - a. insult the Public Protector or the Deputy Public Protector;
 - b. in connection with an investigation do anything which, if the said investigation had been proceedings in a court of law, would have constituted contempt of court.
- 2) Nothing contained in this Act shall prohibit the discussion in Parliament of a matter being investigated or which has been investigated in terms of this Act by the Public Protector.

10. Compensation for expenses

The Public Protector may, with the specific or general approval of the Minister of Finance or any person authorised by the said Minister to so approve, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an investigation by the Public Protector, be paid from State funds to that person.

11. Offences and penalties

- 1) Any person who contravenes the provisions of sections 3) 14., 7) 2. and 9) of this Act, or interferes with the functioning of the office of the Public Protector as contemplated in

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section 181) 4. of the Constitution, shall be guilty of an offence.

- 2) Any person who fails to disclose an interest contemplated in section 3) 14., shall be guilty of an offence.
- 3) Any person who, without just cause, refuses or fails to comply with a direction or request under section 7) 4. or refuses to answer any question put to him or her under that section or gives to such question an answer which to his or her knowledge is false, or refuses to take the oath or to make an affirmation at the request of the Public Protector in terms of section 7) 6. shall be guilty of an offence.
- 4) Any person convicted of an offence in terms of this Act shall be liable to a fine not exceeding R40 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

12. [Repealed]

13. Application of Act

The provisions of this Act shall not affect any investigation under, or the performance or exercise of any duty or power imposed or conferred by or under, any law.

14. Repeal of laws

The Ombudsman Act, 1979 (Act 118 of 1979), the Advocate-General Amendment Act, 1983 (Act 55 of 1983), and the Advocate-General Amendment Act, 1991 (Act 104 of 1991), are hereby repealed.

15. Short title

This Act shall be called the Public Protector Act, 1994.

Canada

British Columbia Ombudsman Act (1996)

[RSBC 1996] CHAPTER 340

1. Definition

In this Act, "authority" means an authority set out in the Schedule or added under section 35 and includes members and employees of the authority.

2. Appointment of Ombudsman

- 1) On the recommendation of the Legislative Assembly, the Lieutenant Governor must appoint as an officer of the Legislature an Ombudsman to exercise the powers and perform the duties assigned to the Ombudsman under this Act.
- 2) The Legislative Assembly must not recommend a person to be appointed Ombudsman unless a special committee of the Legislative Assembly has unanimously recommended to the Legislative Assembly that the person be appointed.

3. Term of office

- 1) The Ombudsman must be appointed for a term of 6 years and may be reappointed in the manner provided in section 2 for further 6 year terms.
- 2) The Ombudsman must not hold another office or engage in other employment.

4. Remuneration

- 1) The Ombudsman is entitled to be paid, out of the consolidated revenue fund, a salary

equal to the salary paid to the chief judge of the Provincial Court.

- 2) The Ombudsman must be reimbursed for reasonable travelling and out of pocket expenses necessarily incurred in discharging duties.

5. Pension

- 1) Subject to subsections 2) and 3), the Public Service Pension Plan, continued under the Public Sector Pension Plans Act, applies to the Ombudsman.
- 2) When calculating the amount of a pension under the Public Service Pension Plan, each year of service as Ombudsman must be counted as 1 1/2 years of pensionable service.
- 3) Despite the accrual of 35 years of pensionable service, contributions to the Public Service Pension Plan must continue for each additional year of service up to 35 years of contributory service.

6. Resignation, removal or suspension

- 1) The Ombudsman may at any time resign the office by written notice
 - a. to the Speaker of the Legislative Assembly, or
 - b. to the Clerk of the Legislative Assembly if there is no Speaker or if the Speaker is absent from British Columbia.
- 2) On the recommendation of the Legislative Assembly, based on cause or incapacity, the

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Lieutenant Governor must, in accordance with the recommendation,

- a. suspend the Ombudsman, with or without salary, or
 - b. remove the Ombudsman from office.
- 3) On the recommendation of the Legislative Assembly the Lieutenant Governor must appoint an acting Ombudsman if
- a. the Ombudsman is suspended or removed,
 - b. the office of Ombudsman becomes vacant for a reason other than by operation of subsection 4), or
 - c. the Ombudsman is temporarily ill or temporarily absent for another reason.
- 4) The appointment of an acting Ombudsman under subsection 3) terminates
- a. on the appointment of a new Ombudsman under section 2,
 - b. at the end of the period of suspension of the Ombudsman,
 - c. immediately after the expiry of 30 sitting days after the commencement of the next session of the Legislature, or
 - d. on the return to office of the Ombudsman from the temporary illness or absence whichever occurs first.
- 5) If the Legislature is not sitting and is not ordered to sit within the next 5 days, the Lieutenant Governor in Council may suspend the Ombudsman from office, with or without salary, for cause or incapacity, but the suspension does not continue in force after the expiry of 30 sitting days.

7. Appointment of acting Ombudsman without recommendation of Legislature

- 1) The Lieutenant Governor in Council may appoint an acting Ombudsman
 - a. if
 - i. the Ombudsman is suspended or removed, or

- ii. the office of Ombudsman becomes vacant for a reason other than by operation of subsection 2) c., when the Legislature is sitting but it does not make a recommendation under section 2) or 6) 3. before the end of that sitting or before an adjournment of the Legislature exceeding 5 days,
 - b. if the Ombudsman is suspended or the office of Ombudsman becomes vacant when the Legislature is not sitting and is not ordered to sit within the next 5 days, or
 - c. if the Ombudsman is temporarily ill or temporarily absent for another reason.
- 2) The appointment of an acting Ombudsman under subsection 1) terminates
- a. on the appointment of a new Ombudsman under section 2,
 - b. at the end of the period of suspension of the Ombudsman,
 - c. immediately after the expiry of 30 sitting days after the day on which the Ombudsman was appointed,
 - d. on the appointment of an acting Ombudsman under section 6 (3), or
 - e. on the return to office of the Ombudsman from temporary illness or absence, whichever occurs first.

8. Staff

- 1) In accordance with the Public Service Act, the Ombudsman may appoint employees necessary to perform the duties of the office.
- 2) For the purposes of the application of the Public Service Act to this section, the Ombudsman is a deputy minister.
- 3) The Ombudsman may make a special report to the Legislative Assembly if the Ombudsman believes
 - a. the amounts and establishment provided for the office of the Ombudsman in the estimates, or

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- b. the services provided to the Ombudsman by the Public Service Employee Relations Commission are inadequate to enable the Ombudsman to fulfil the duties of the office.

9. Confidentiality

- 1) Before beginning to perform the duties of the office, the Ombudsman must take an oath before the Clerk of the Legislative Assembly
 - a. to faithfully and impartially exercise the powers and perform the duties of the office, and
 - b. not to divulge any information received under this Act, except if permitted by this Act.
- 2) A person on the staff of the Ombudsman must, before beginning to perform duties, take an oath before the Ombudsman not to divulge any information received under this Act except if permitted by this Act.
- 3) For the purposes of subsection 2) the Ombudsman is a commissioner for taking affidavits for British Columbia.
- 4) The Ombudsman and every person on the staff of the Ombudsman must, subject to this Act, maintain confidentiality in respect of all matters that come to their knowledge in performing their duties under this Act.
- 5) The Ombudsman or a person holding an office or appointment under the Ombudsman must not give or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of anything coming to his or her knowledge in the exercise of duties under this Act, except
 - a. to enforce the Ombudsman's powers of investigation,
 - b. to enforce compliance with this Act, or
 - c. with respect to a trial of a person for perjury.
- 6) An investigation under this Act must be conducted in private unless the Ombudsman considers that there are special circumstances in which public knowledge is essential in order to further the investigation.

- 7) Despite this section, the Ombudsman may disclose or authorize a member of his or her staff to disclose a matter that, in the opinion of the Ombudsman, is necessary to
 - a. further an investigation,
 - b. prosecute an offence under this Act, or
 - c. establish grounds for conclusions and recommendations made in a report under this Act.

10. Powers and duties of Ombudsman in administrative matters

- 1) The Ombudsman, with respect to a matter of administration, on a complaint or on the Ombudsman's own initiative, may investigate
 - a. a decision or recommendation made,
 - b. an act done or omitted, or
 - c. a procedure used by an authority that aggrieves or may aggrieve a person.
- 2) The powers and duties conferred on the Ombudsman may be exercised and performed despite a provision in an Act to the effect that
 - a. a decision, recommendation or act is final,
 - b. no appeal lies in respect of it, or
 - c. a proceeding or decision of the authority whose decision, recommendation or act it is must not be challenged, reviewed, quashed or called into question.
- 3) The Legislative Assembly or any of its committees may at any time refer a matter to the Ombudsman for investigation and report.
- 4) The Ombudsman must
 - a. investigate the matter referred under subsection (3), so far as it is within the Ombudsman's jurisdiction and subject to any special directions, and
 - b. report back as the Ombudsman thinks fit.

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- 5) Sections 23 to 26 do not apply in respect of an investigation or report made under subsection 4).

11. Jurisdiction of Ombudsman

- 1) This Act does not authorize the Ombudsman to investigate a decision, recommendation, act or omission
 - a. in respect of which there is under an enactment a right of appeal or objection or a right to apply for a review on the merits of the case to a court or tribunal constituted by or under an enactment, until after that right of appeal, objection or application has been exercised or until after the time limit for the exercise of that right has expired, or
 - b. of a person acting as a solicitor for an authority or acting as counsel to an authority in relation to a proceeding.
- 2) The Ombudsman may investigate conduct occurring before the commencement of this Act.
- 3) If a question arises about the Ombudsman's jurisdiction to investigate a case or class of cases under this Act, the Ombudsman may apply to the Supreme Court for a declaratory order determining the question.

12. Complaint to Ombudsman

- 1) A complaint under this Act may be made by a person or group of persons.
- 2) A complaint must be in writing.
- 3) If a communication written by or on behalf of a person confined in a federal or Provincial correctional institution or to a hospital or facility operated by or under the direction of an authority, or by a person in the custody of another person for any reason, is addressed to the Ombudsman the person in charge of the institution, hospital or facility in which the writer is confined or the person having custody of the writer must immediately, mail or forward the communication, unopened, to the Ombudsman.
- 4) A communication from the Ombudsman to a person confined or in custody as described

in subsection 3) must be forwarded to that person in a similar manner.

- 5) Subsections 3) and 4) apply despite any other enactment.

13. Refusal to investigate

The Ombudsman may refuse to investigate or cease investigating a complaint if, in the opinion of the Ombudsman, any of the following apply:

- a. the complainant or person aggrieved knew or ought to have known of the decision, recommendation, act or omission to which the complaint refers more than one year before the complaint was received by the Ombudsman;
- b. the subject matter of the complaint primarily affects a person other than the complainant and the complainant does not have sufficient personal interest in it;
- c. the law or existing administrative procedure provides a remedy adequate in the circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or herself of the remedy, there is no reasonable justification for the failure to do so;
- d. the complaint is frivolous, vexatious, not made in good faith or concerns a trivial matter;
- e. having regard to all the circumstances, further investigation is not necessary in order to consider the complaint;
- f. in the circumstances, investigation would not benefit the complainant or person aggrieved;
- g. the complainant has abandoned the complaint
 - i. by failing to advise the Ombudsman of a current address or telephone number at which the Ombudsman can contact him or her, or
 - ii. by failing to respond after a reasonable number of attempts by the Ombudsman to contact him or her in writing or verbally;

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- h. the complaint is withdrawn by the complainant by notice to the Ombudsman;
- i. the complaint is settled under section 14.

14. Ombudsman to notify authority

- 1) If the Ombudsman investigates a matter, the Ombudsman must notify the authority affected and any other person the Ombudsman considers appropriate to notify in the circumstances.
- 2) At any time during or after an investigation the Ombudsman may consult with an authority to attempt to settle the complaint, or for any other purpose.
- 3) If before making a decision respecting a matter being investigated the Ombudsman receives a request for consultation from the authority, the Ombudsman must consult with the authority.

15. Power to obtain information

- 1) The Ombudsman may receive and obtain information from the persons and in the manner the Ombudsman considers appropriate, and in the Ombudsman's discretion may conduct hearings.
- 2) Without restricting subsection 1), but subject to this Act, the Ombudsman may do one or more of the following:
 - a. at any reasonable time enter, remain on and inspect all of the premises occupied by an authority, talk in private with any person there and otherwise investigate matters within the Ombudsman's jurisdiction;
 - b. require a person to furnish information or produce, at a time and place the Ombudsman specifies, a document or thing in the person's possession or control that relates to an investigation, whether or not that person is a past or present member or employee of an authority and whether or not the document or thing is in the custody or under the control of an authority;

c. make copies of information furnished or a document or thing produced under this section;

d. summon before the Ombudsman and examine on oath any person who the Ombudsman believes is able to give information relevant to an investigation, whether or not that person is a complainant or a member or employee of an authority, and for that purpose may administer an oath;

e. receive and accept, on oath or otherwise, evidence the Ombudsman considers appropriate, whether or not it would be admissible in a court.

- 3) If the authority requests the return of a document or thing obtained under subsection 2), the Ombudsman must return it to the authority within 48 hours after receiving the request, but the Ombudsman may again require its production in accordance with this section.

16. Protection

A person must not discharge, suspend, expel, intimidate, coerce, evict, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in the investigation, inquiry or reporting of a complaint or other proceeding under this Act.

17. Opportunity to make representations

If it appears to the Ombudsman that there may be sufficient grounds for making a report or recommendation under this Act that may adversely affect an authority or person, the Ombudsman must, before deciding the matter,

- a. inform the authority or person of the grounds, and
- b. give the authority or person the opportunity to make representations, either orally or in writing at the discretion of the Ombudsman.

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18. Attorney General may restrict investigative powers

- 1) The Ombudsman must not enter any premises and must not require any information or answer to be given or any document or thing to be produced if the Attorney General certifies that entering the premises, giving the information, answering the question or producing the document or thing might
 - a. interfere with or impede the investigation or detection of an offence,
 - b. result in or involve the disclosure of deliberations of the Executive Council, or
 - c. result in or involve the disclosure of proceedings of the Executive Council or a committee of it, relating to matters of a secret or confidential nature and that the disclosure would be contrary or prejudicial to the public interest.
- 2) The Ombudsman must report each certificate of the Attorney General to the Legislative Assembly not later than in the Ombudsman's next annual report.

19. Application of other laws respecting disclosure

- 1) Subject to section 18, a rule of law that authorizes or requires the withholding of a document or thing, or the refusal to disclose a matter in answer to a question, on the ground that the production or disclosure would be injurious to the public interest does not apply to production of the document or thing or the disclosure of the matter to the Ombudsman.
- 2) Subject to section 18 and to subsection 4), a person who is bound by an enactment to maintain confidentiality in relation to or not to disclose any matter must not be required to supply any information to or answer any question put by the Ombudsman in relation to that matter, or to produce to the Ombudsman any document or thing relating to it, if compliance with that requirement would be in breach of the obligation of confidentiality or nondisclosure.

- 3) Subject to section 18 but despite subsection 2), if a person is bound to maintain confidentiality in respect of a matter only because of an oath under the Public Service Act or a rule of law referred to in subsection (1), the person must disclose the information, answer questions and produce documents or things on the request of the Ombudsman.
- 4) Subject to section 18, after receiving a complainant's consent in writing, the Ombudsman may require a person described in subsection 2) to, and that person must, supply information, answer any question or produce any document or thing required by the Ombudsman that relates only to the complainant.

20. Privileged information

- 1) Subject to section 19, a person has the same privileges in relation to giving information, answering questions or producing documents or things to the Ombudsman as the person would have with respect to a proceeding in a court.
- 2) Except on the trial of a person for perjury or for an offence under this Act, evidence given by a person in proceedings before the Ombudsman and evidence of the existence of the proceedings is inadmissible against that person in a court or in any other proceeding of a judicial nature.

21. Witness and information expenses

- 1) A person examined under section 15. 2) d. is entitled to the same fees, allowances and expenses as if the person were a witness in the Supreme Court.
- 2) If a person incurs expenses in complying with a request of the Ombudsman for production of documents or other information, the Ombudsman may reimburse that person for reasonable expenses incurred that are not covered under subsection 1).

22. If investigation is refused or discontinued or complaint is not substantiated

- 1) If the Ombudsman decides
 - a. not to investigate or further investigate a complaint under section 13, or

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- b. at the conclusion of an investigation, that the complaint has not been substantiated,
the Ombudsman must
 - c. record the decision in writing, and
 - d. as soon as is reasonable, notify both the complainant and the authority of the decision and the reasons for it.
- 2) The reasons provided under subsection 1) d. with respect to a decision referred to in subsection 1) b. must be in writing.
- 3) The Ombudsman may indicate with the notification under subsection 1) d. any other recourse that may be available to the complainant.
- ii. failed to give adequate and appropriate reasons in relation to the nature of the matter, or
 - iii. was negligent or acted improperly, or
 - c. there was unreasonable delay in dealing with the subject matter of the investigation, the Ombudsman must report that opinion and the reasons for it to the authority and may make the recommendation the Ombudsman considers appropriate.
- 2) Without restricting subsection 1), the Ombudsman may recommend that
- a. a matter be referred to the appropriate authority for further consideration,
 - b. an act be remedied,
 - c. an omission or delay be rectified,
 - d. a decision or recommendation be cancelled or changed,
 - e. reasons be given,
 - f. a practice, procedure or course of conduct be altered,
 - g. an enactment or other rule of law be reconsidered, or
 - h. any other steps be taken.

23. Procedure after investigation

- 1) If, after completing an investigation, the Ombudsman is of the opinion that
- a. a decision, recommendation, act or omission that was the subject matter of the investigation was
 - i. contrary to law,
 - ii. unjust, oppressive or improperly discriminatory,
 - iii. made, done or omitted under a statutory provision or other rule of law or practice that is unjust, oppressive or improperly discriminatory,
 - iv. based wholly or partly on a mistake of law or fact or on irrelevant grounds or consideration,
 - v. related to the application of arbitrary, unreasonable or unfair procedures, or
 - vi. otherwise wrong,
 - b. in doing or omitting an act or in making or acting on a decision or recommendation, an authority
 - i. did so for an improper purpose,

24. Authority to notify Ombudsman of steps taken

- 1) If a recommendation is made under section 23, the Ombudsman may request the authority
- a. to notify the Ombudsman within a specified time of the steps that have been or are proposed to be taken to give effect to the recommendation, or
 - b. if no steps have been or are proposed to be taken, the reasons for not following the recommendation.
- 2) If, after considering a response made by an authority under subsection 1), the Ombudsman believes it advisable to modify or further modify the recommendation,

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the Ombudsman must notify the authority of the recommendation as modified and may request that the authority notify the Ombudsman

- a. of the steps that have been or are proposed to be taken to give effect to the modified recommendation, or
- b. if no steps have been or are proposed to be taken, of the reasons for not following the modified recommendation.

25. Report of Ombudsman if no suitable action taken

- 1) If within a reasonable time after a request has been made under section 24 no action is taken that the Ombudsman believes adequate or appropriate, the Ombudsman, after considering any reasons given by the authority, may submit a report of the matter to the Lieutenant Governor in Council and, after that, may make a report to the Legislative Assembly respecting the matter as the Ombudsman considers appropriate.
- 2) The Ombudsman must attach to a report under subsection 1) a copy of the Ombudsman's recommendation and any response made to it under section 24, but the Ombudsman must delete from the recommendation and from the response any material that would unreasonably invade any person's privacy, and may delete material revealing the identity of a member, officer or employee of an authority.

26. Complainant to be informed

- 1) If the Ombudsman makes a recommendation under section 23 or 24 and no action that the Ombudsman believes adequate or appropriate is taken within a reasonable time, the Ombudsman
 - a. must inform the complainant of the recommendation and
 - b. may make additional comments the Ombudsman considers appropriate.
- 2) The Ombudsman must in every case inform the complainant within a reasonable time of the result of the investigation.

27. No hearing as of right

A person is not entitled as of right to a hearing before the Ombudsman except as provided in this Act.

28. Ombudsman not subject to review

Proceedings of the Ombudsman must not be challenged, reviewed or called into question by a court, except on the ground of lack or excess of jurisdiction.

29. Proceedings privileged

- 1) Proceedings do not lie against the Ombudsman or against a person acting under the authority of the Ombudsman for anything done in good faith, reported or said in the course of the exercise or purported exercise of duties under this Act.
- 2) For the purposes of any Act or law respecting libel or slander,
 - a. anything said, all information supplied and all documents and things produced in the course of an inquiry or proceeding before the Ombudsman under this Act are privileged to the same extent as if the inquiry or proceeding were a proceeding in a court, and
 - b. a report made by the Ombudsman and a fair and accurate account of the report in a newspaper, periodical publication or broadcast is privileged to the same extent as if the report of the Ombudsman were the order of a court.

30. Delegation of powers

- 1) The Ombudsman may in writing delegate to a person or class of persons any of the Ombudsman's powers or duties under this Act, except the power
 - a. to delegate under this section,
 - b. to make a report under this Act, and
 - c. to require a production or disclosure under section 19 1).
- 2) A delegation under this section is revocable at will and does not prevent the Ombudsman

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from exercising the delegated power at any time.

- 3) A delegation may be made subject to terms the Ombudsman considers appropriate.
- 4) If the Ombudsman by whom a delegation is made ceases to hold office, the delegation continues in effect so long as the delegate continues in office or until revoked by a succeeding Ombudsman.
- 5) A person purporting to exercise power of the Ombudsman through a delegation under this section must, when requested to do so, produce evidence of the person's authority to exercise the power.

31. Annual and special reports

- 1) The Ombudsman must report annually on the affairs of the Ombudsman's office to the Speaker of the Legislative Assembly.
- 2) The Speaker must lay the report before the Legislative Assembly as soon as possible.
- 3) If the Ombudsman considers it to be in the public interest or in the interest of a person or authority, the Ombudsman may make a special report to the Legislative Assembly or comment publicly about a matter relating generally to the exercise of the Ombudsman's duties under this Act or to a particular case investigated by the Ombudsman.

32. Offences

A person commits an offence who does any of the following:

- a. without lawful justification or excuse, intentionally obstructs, hinders or resists the Ombudsman or another person in the exercise of a power conferred or a duty imposed under this Act;
- b. without lawful justification or excuse, refuses or intentionally fails to comply with a lawful requirement of the Ombudsman or another person under this Act;
- c. intentionally makes a false statement to or misleads or attempts to mislead the Ombudsman or another person in the

exercise of a power conferred or a duty imposed under this Act;

- d. violates an oath taken under this Act;
- e. contravenes section 16.

33. Other remedies

The provisions of this Act are in addition to the provisions of any other enactment or rule of law under which

- a. a remedy, right of appeal or objection is provided, or
- b. a procedure is provided for inquiry into or investigation of a matter, and nothing in this Act limits or affects that remedy, right of appeal, objection or procedure.

34. Rules

- 1) On its own initiative or on the recommendation of the Lieutenant Governor in Council the Legislative Assembly may make rules for the guidance of the Ombudsman in exercising the powers and performing the duties of the office.
- 2) Subject to this Act and any rules made under subsection 1), the Ombudsman may determine the Ombudsman's procedure and the procedure for the members of the Ombudsman's staff in exercising of the powers conferred and performing the duties imposed by this Act.

35. Additions to Schedule

The Lieutenant Governor in Council may, by order, add authorities to the Schedule.

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Part IV:
Legislation for Police and
Armed Forces Ombuds
Institutions

Germany

Law on the Parliamentary Commissioner for the Armed Forces (1982)

Most recently amended by Art. 16 BwNeuAusG (20 Dec. 2001)

Section 1. Constitutional Status; Tasks

- 1) In the exercise of parliamentary control, the Commissioner shall perform his duties as an auxiliary organ of the Bundestag.
- 2) The Commissioner shall investigate specific matters upon instructions from the Bundestag or the Defence Committee. Instructions can only be issued when the Defence Committee does not make the matter a subject of its own deliberations. The Commissioner may request that the Defence Committee issue instructions to investigate specific matters.
- 3) The Commissioner shall, on his own initiative and using his discretion, take action when, in the exercise of his right pursuant to paragraph 4) of Section 3, through information received from Members of the Bundestag, through petitions pursuant to Section 7 or in any other way, circumstances come to his attention which suggest a violation of the basic rights of service personnel or of the principles of Innere Führung. The Commissioner shall not act in accordance with sentence 1, when the Defence Committee has made the matter the subject of its own deliberations.

Section 2. Reporting Duties

- 1) The Commissioner shall submit to the Bundestag a written overall report for the calendar year (Annual Report).

- 2) He may, at any time, submit individual reports to the Bundestag or the Defence Committee.
- 3) When the Commissioner acts upon instructions, he shall, upon request, submit an individual report on the results of his investigation

Section 3. Official Powers

In performing the tasks assigned to him, the Commissioner shall have the following powers:

- 1) He may demand information and access to records from the Minister of Defence and all the Minister's subordinate agencies and personnel. These rights can only be denied to him in the case of compelling reasons of secrecy. Such denial shall be determined by the Minister of Defence himself or his permanent official deputy; he shall state the reasons for it before the Defence Committee. On the basis of instructions pursuant to paragraph 2) of Section 1 and in the case of a petition based on a complaint by the petitioner, the Commissioner shall have the right to hear the petitioner as well as witnesses and experts. These persons shall be reimbursed pursuant to the Law on the Reimbursement of Expenses and the Remuneration of Witnesses and Experts of 1 October 1969 (Federal Law Gazette I, p. 1756), last amended by Article 11 of the law of 26 November 1979 (Federal Law Gazette I, p. 1953).
- 2) He may give the agencies concerned the opportunity to settle a matter.

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- 3) He may refer a matter to the authority competent for the institution of criminal or disciplinary proceedings.
- 4) He may, at any time, visit any units, headquarters, agencies and authorities of the Federal Armed Forces and their institutions even without prior announcement. This right shall exclusively be vested in the person of the Commissioner. Sentences 2 and 3 of paragraph 1) shall apply mutatis mutandis.
- 5) He may request both summary reports from the Minister of Defence on the exercise of disciplinary power in the armed forces and statistical reports from the competent federal and Land authorities on the administration of criminal justice whenever the armed forces or their service personnel are affected.
- 6) In the case of criminal or disciplinary proceedings he may attend the court proceedings even when the public is excluded. He shall be given access to records to the same extent as the public prosecutor or the representative of the initiating authority. The right pursuant to sentence 1 shall also apply in matters of request and complaint proceedings under the Military Disciplinary Code and the Military Complaints Regulations before courts having jurisdiction over military disciplinary offences and in proceedings before administrative courts relating to his area of responsibility; in such proceedings he shall have the same right of access to records as a party to the proceedings.

Section 4. Administrative Assistance

Courts and administrative authorities of the Federation, the Länder and the municipalities shall be obliged to render the Commissioner administrative assistance in the conduct of necessary investigations.

Section 5. General Guidelines; Exemption from Instructions

- 1) The Bundestag and the Defence Committee may issue general guidelines for the work of the Commissioner.

- 2) Notwithstanding paragraph 2) of Section 1, the Commissioner shall not be subject to instructions.

Section 6. Obligation of Presence

The Bundestag and the Defence Committee may at any time demand the presence of the Commissioner.

Section 7. Service Personnel's Right of Petition

Every member of the armed forces shall have the right to contact the Commissioner directly without going through official channels. He or she shall not be disciplined or discriminated against because of his or her petition to the Commissioner.

Section 8. Anonymous Petitions

Anonymous petitions shall not be dealt with.

Section 9. Confidentiality of Petitions

Where the Commissioner takes action in response to a petition, it shall be left to his discretion to disclose the fact of a petition and the name of the petitioner. He shall refrain from the disclosure if the petitioner so wishes and compliance with this wish is not barred by legal duties.

Section 10. Obligation of Secrecy

- 1) The Commissioner is obliged to maintain secrecy regarding matters that have come to his official knowledge even after his term of office has come to an end. This does not apply to official communications or to matters which are known to the general public or which do not require secrecy (in view of the level of importance accorded to them).
- 2) The Commissioner shall not, even if he is not in office any more, give any evidence on such matters before a court or out of court or make statements without permission. This permission shall be given by the President of the Bundestag in agreement with the Defence Committee.
- 3) Permission to give evidence as a witness shall not be denied unless it would be to

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the detriment of the public good of the Federation or of one of the German Länder, or it would severely jeopardize or considerably impede the performance of public duties.

- 4) This shall not affect the statutory obligation to report criminal offences and to defend the preservation of the free democratic basic order.

Section 11 [repealed]

Section 12. Obligation of Federal and Land Authorities to inform the Commissioner

The judicial and administrative authorities of the Federation and the Länder shall be obliged to inform the Commissioner about the institution of proceedings, of the preferment of a public charge, of the order for investigations in disciplinary proceedings and of the outcome of the proceedings, when the matter has been referred to one of these authorities by the Commissioner.

Section 13. Election of the Commissioner

The Bundestag shall elect the Commissioner by secret ballot with a majority of its Members. Proposals for election may be made by the Defence Committee, the parliamentary groups and by as many Members of the Bundestag as are required for the formation of a parliamentary group pursuant to the Rules of Procedure. No debate shall take place.

Section 14. Eligibility; Term of Office; Ban on Practice of another Profession; Exemption from Military Service

- 1) Every German who is entitled to be elected to the Bundestag and has attained the age of 35 shall be eligible for the office of Commissioner.
- 2) The term of office of the Commissioner shall be five years. Re-election shall be admissible.
- 3) The Commissioner may not hold any other salaried office, or engage in any trade or practise a profession, or belong to the management or the supervisory board of an enterprise carried on for profit, or be a member of a government or a legislative body of the Federation or a Land.

- 4) On assuming office, the Commissioner shall take the oath of office as laid down in Article 56 of the Basic Law.
- 5) For the duration of his term of office, the Commissioner shall be exempt from military service.

Section 15. Legal Status of the Commissioner; Beginning and End of Term of Office

- 1) Pursuant to the provisions of this Law, the office of the Commissioner is one of the federal public service. The President of the Bundestag shall appoint the person elected.
- 2) The Commissioner's term of office shall begin when his letter of appointment is handed over or, should the oath have been taken at an earlier date (paragraph 4) of Section 14), at the time when the oath is taken.
- 3) The Commissioner's term of office shall end, apart from the termination of his tenure pursuant to paragraph 2) of Section 14 or through death,
 1. upon his dismissal,
 2. upon his resignation.
- 4) Upon the request of the Defence Committee, the Bundestag may instruct its President to dismiss the Commissioner. This decision shall require the approval of the majority of the Members of the Bundestag.
- 5) The Commissioner may request his dismissal at any time. The President of the Bundestag shall announce the dismissal.

Section 16. Seat of the Commissioner; Chief Administrator; Staff; Budget

- 1) The seat of the Commissioner shall be attached to the Bundestag.
- 2) The Commissioner shall be supported by a Chief Administrator. Additional personnel shall assist the Commissioner in the execution of his duties. The civil servants attached to the Commissioner shall be civil servants of the Bundestag pursuant to Section 176 of the Law on Federal Civil Servants of 3 January 1977 (Federal Law Gazette I, pp. 1, 795, 842), last amended by the Federal Law of 26 June

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1981 (Federal Law Gazette I, p. 553). The Commissioner shall be the superior of the personnel assigned to him.

- 3) The necessary personnel and equipment made available to the Commissioner for performing his functions shall be shown in a separate chapter of the Bundestag budget.

Section 17. Representation of the Commissioner

- 1) If the Commissioner is prevented from performing his functions, and from the end of his term of office to the beginning of the term of office of his successor, the Chief Administrator shall exercise the rights of the Commissioner except for the right pursuant to paragraph 4) of Section 3. Paragraph 2) of Section 5 shall apply *mutatis mutandis*.
- 2) If the Commissioner is prevented from exercising his office for more than three months, or when more than three months have elapsed after the end of the Commissioner's term of office without the term of office of a successor having commenced, the Defence Committee may authorise the Chief Administrator to exercise the right pursuant to paragraph 4) of Section 3.

Section 18. Official Emoluments; Other Payments

- 1) From the beginning of the calendar month in which he takes office to the end of the calendar month in which his term of office ends, the Commissioner shall be paid official emoluments. Letters a and b of paragraph 1) of Section 11 of the Federal Ministers Act of 27 July 1971 (Federal Law Gazette I, p. 1166), last amended by the Law on the Reduction of the Emoluments of Members of the Federal Government and of Parliamentary State Secretaries of 22 December 1982 (Federal Law Gazette I, p. 2007), shall apply *mutatis mutandis* with the proviso that the Commissioner's salary and local allowance shall be 75 per cent of the salary and local allowance of a Federal Minister. The emoluments shall be paid monthly in advance.

- 2) In all other respects, paragraphs 2) and 4) of Section 11 and Sections 13 to 20 of the Federal Ministers Act shall apply *mutatis mutandis* with the proviso that, instead of a two-year term of office (paragraph 1) of Section 15 of the Federal Ministers Act), a five-year term shall apply. Sentence 1 shall apply *mutatis mutandis* to a career soldier or temporary-career volunteer who has been appointed Commissioner with the proviso that, in the case of temporary-career volunteers where paragraph 2) of Section 18 of the Federal Ministers Act applies, the date of retirement shall be replaced by the termination of service.
- 3) The provisions of the Federal Travel Expenses Law of 13 November 1973 (Federal Law Gazette I, p. 1621) last amended by the Ordinance of 31 May 1979 (Federal Law Gazette I, p. 618) regarding the highest travel expense category, and the provisions of the Federal Removal Expenses Law of 13 November 1973 (Federal Law Gazette I, p. 1628), last amended by Article VII of the Law of 20 December 1974 (Federal Law Gazette I, p. 3716) regarding removals necessary as a result of appointment or termination of office, shall apply *mutatis mutandis*.

Section 19 [repealed]

Section 20. Entry into Force

Northern Ireland

Police Act (1998) - Extract

(...)

51. The Police Ombudsman for Northern Ireland

- 1) For the purposes of this Part there shall be a Police Ombudsman for Northern Ireland.
- 2) The person for the time being holding the office of Police Ombudsman for Northern Ireland shall by that name be a corporation sole.
- 3) Schedule 3 shall have effect in relation to the Police Ombudsman for Northern Ireland (in this Part referred to as "the Ombudsman").
- 4) The Ombudsman shall exercise his powers under this Part in such manner and to such extent as appears to him to be best calculated to secure
 - a. the efficiency, effectiveness and independence of the police complaints system; and
 - b. the confidence of the public and of members of the police force in that system.
- 5) The Independent Commission for Police Complaints for Northern Ireland is hereby abolished.

52. Complaints receipt and initial classification of complaints

- 1) For the purposes of this Part, all complaints about the police force shall either

- a. be made to the Ombudsman;

or

- b. if made to a member of the police force, the Board or the Secretary of State, be referred immediately to the Ombudsman.

- 2) Where a complaint

- a. is made to the Chief Constable; and

- b. appears to the Chief Constable to be a complaint to which subsection 4) applies,

the Chief Constable shall take such steps as appear to him to be desirable for the purpose of preserving evidence relating to the conduct complained of.

- 3) The Ombudsman shall

- a. record and consider each complaint made or referred to him under subsection 1); and

- b. determine whether it is a complaint to which subsection 4) applies.

- 4) Subject to subsection 5), this subsection applies to a complaint about the conduct of a member of the police force which is made by, or on behalf of, a member of the public.

- 5) Subsection 4) does not apply to a complaint in so far as it relates to the direction and control of the police force by the Chief Constable.

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- 6) Where the Ombudsman determines that a complaint made or referred to him under paragraph 1) is not a complaint to which subsection 4) applies, he shall refer the complaint to the Chief Constable, the Board or the Secretary of State as he thinks fit and shall notify the complainant accordingly.
 - 7) A complaint referred under subsection 6) shall be dealt with according to the discretion of the Chief Constable, the Board or the Secretary of State (as the case may be).
 - 8) Subject to subsection 9), where the Ombudsman determines that a complaint made or referred to him under subsection 1) is a complaint to which subsection 4) applies, the complaint shall be dealt with in accordance with the following provisions of this Part; and accordingly references in those provisions to a complaint shall be construed as references to a complaint in relation to which the Ombudsman has made such a determination.
 - 9) If any conduct to which a complaint wholly or partly relates is or has been the subject of disciplinary or criminal proceedings, none of the following provisions of this Part shall have effect in relation to the complaint in so far as it relates to that conduct.
 - 10) In the case of a complaint made otherwise than as mentioned in subsection 2)a., the Chief Constable shall, if so requested by the Ombudsman, take such steps as appear to the Chief Constable to be desirable for the purpose of preserving evidence relating to the conduct complained of.
- 4) Where a complaint is referred under subsection 3), the appropriate disciplinary authority shall seek to resolve it informally and may appoint a member of the police force to do so on behalf of the authority.
 - 5) The Chief Constable shall, at the request of the Board, provide a member of the police force to be appointed by the Board under subsection 4).
 - 6) If, after attempts have been made to resolve a complaint informally, it appears to the appropriate disciplinary authority
 - a. that informal resolution of the complaint is impossible; or
 - b. that the complaint is for any other reason not suitable for informal resolution, the appropriate disciplinary authority shall notify the Ombudsman accordingly and refer the complaint to him.
 - 7) Subject to subsection 8), no statement made by any person for the purpose of the informal resolution of a complaint shall be admissible in any subsequent criminal, civil or disciplinary proceedings.
 - 8) A statement is not rendered inadmissible by subsection 7) if it consists of or includes an admission relating to a matter which does not fall to be resolved informally.

54. Complaints formal investigation

53. Complaints informal resolution

- 1) The Ombudsman shall consider whether the complaint is suitable for informal resolution and may for that purpose make such investigations as he thinks fit.
- 2) A complaint is not suitable for informal resolution unless
 - a. the complainant gives his consent; and
 - b. it is not a serious complaint.
- 3) If it appears to the Ombudsman that the complaint is suitable for informal

- 1) If
 - a. it appears to the Ombudsman that a complaint is not suitable for informal resolution; or
 - b. a complaint is referred to the Ombudsman under section 536),the complaint shall be formally investigated as provided in subsection 2) or 3).
- 2) Where the complaint is a serious complaint, the Ombudsman shall formally investigate it in accordance with section 56.
- 3) In the case of any other complaint, the Ombudsman may as he thinks fit

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- a. formally investigate the complaint in accordance with section 56; or
- b. refer the complaint to the Chief Constable for formal investigation by a police officer in accordance with section 57.

55. Consideration of other matters by the Ombudsman

- 1) The Board or the Secretary of State may refer to the Ombudsman any matter which
 - a. appears to the Board or the Secretary of State to indicate that a member of the police force may have
 - i. committed a criminal offence; or
 - ii. behaved in a manner which would justify disciplinary proceedings; and
 - b. is not the subject of a complaint,

if, after consultation with the Ombudsman and the Chief Constable, it appears to the Board or the Secretary of State that it is desirable in the public interest that the Ombudsman should investigate the matter.
- 2) The Chief Constable shall refer to the Ombudsman any matter which appears to the Chief Constable to indicate that conduct of a member of the police force may have resulted in the death of some other person.
- 3) Where any matter is referred to the Ombudsman under subsection 1) or 2), he shall formally investigate the matter in accordance with section 56.
- 4) The Chief Constable may refer to the Ombudsman any matter which
 - a. appears to the Chief Constable to indicate that a member of the police force may have
 - i. committed a criminal offence; or
 - ii. behaved in a manner which would justify disciplinary proceedings; and
 - b. is not the subject of a complaint,

if it appears to the Chief Constable that it is desirable in the public interest that the Ombudsman should investigate the matter.

- 5) Where any matter is referred to the Ombudsman under subsection 4), he shall formally investigate the matter in accordance with section 56 if it appears to him that it is desirable in the public interest that he should do so.
- 6) The Ombudsman may of his own motion formally investigate in accordance with section 56 any matter which
 - a. appears to the Ombudsman to indicate that a member of the police force may have
 - i. committed a criminal offence; or
 - ii. behaved in a manner which would justify disciplinary proceedings; and
 - b. is not the subject of a complaint,

if it appears to the Ombudsman that it is desirable in the public interest that he should do so.
- 7) The Ombudsman shall notify
 - a. the Board or the Secretary of State, in the case of a matter referred under subsection 1);
 - b. the Chief Constable, in the case of a matter referred under subsection 2) or 4), of the outcome of any criminal or disciplinary proceedings brought against a member of the police force in respect of, or in connection with, the matter so referred.

56. Formal investigation by the Ombudsman

- 1) Where a complaint or matter is to be formally investigated by the Ombudsman under section 54. 2) or 3) a. or 55. 3), 5) or 6), he shall appoint an officer of the Ombudsman to conduct the investigation.
- 2) The Secretary of State may by order provide that any provision of the Police and Criminal Evidence (Northern Ireland) Order 1989 which relates to investigation of offences conducted by police officers (within the meaning of that Order) shall apply, subject to such modifications as the order may specify, to investigations under this section conducted by persons who are not police officers (within the meaning of that Order).

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- 3) A person employed by the Ombudsman under paragraph 3. 1) of Schedule 3 shall for the purpose of conducting, or assisting in the conduct of, an investigation under this section have all the powers and privileges of a constable throughout Northern Ireland and the adjacent United Kingdom territorial waters; and subsection 3) of section 32 of the Police (Northern Ireland) Act 2000 applies for the purposes of this subsection as it applies for the purposes of subsection 2) of that section.
 - 4) Section 66 applies to a person to whom subsection 3) applies as it applies to a constable.
 - 5) A person to whom subsection 3) applies shall not be regarded as in police service for the purposes of
 - a. Article 145 of the Trade Union and Labour Relations (Northern Ireland) Order 1995; or
 - b. Article 243 of the Employment Rights (Northern Ireland) Order 1996.
 - 6) At the end of an investigation under this section the person appointed to conduct the investigation shall submit a report on the investigation to the Ombudsman.
- b. if such an appointment has already been made and the Ombudsman is not satisfied with the person appointed, that
 - i. the Chief Constable shall, as soon as is reasonably practicable, select another police officer and notify the Ombudsman that he proposes to appoint that person; and
 - ii. the appointment shall not be made unless the Ombudsman gives notice to the Chief Constable that he approves that person.
 - 4) The Ombudsman may supervise the investigation of any complaint under this section if he considers that it is desirable in the public interest for him to do so.
 - 5) Where the Ombudsman decides to supervise an investigation under this section he shall notify the Chief Constable to that effect.
 - 6) A member of a police force in Great Britain who is appointed to conduct an investigation under this section shall, for the purpose of conducting that investigation, have all the powers and privileges of a constable throughout Northern Ireland and the adjacent United Kingdom territorial waters; and subsection 3) of section 32 of the Police (Northern Ireland) Act 2000 applies for the purposes of this subsection as it applies for the purposes of subsection 2) of that section.

57. Formal investigation by a police officer

- 1) Where a complaint is referred to the Chief Constable under section 543) b., he shall appoint a police officer to investigate it formally on behalf of the Ombudsman.
 - 2) A member of the police force may not be appointed to investigate a complaint formally if he has previously been appointed to act in relation to it under section 534).
 - 3) The Ombudsman may require
 - a. that no appointment of a person to conduct an investigation under this section shall be made unless the Ombudsman has given notice to the Chief Constable that he approves the person whom the Chief Constable proposes to appoint; or
- 7) The Ombudsman may impose requirements as to the conduct of an investigation which the Ombudsman is supervising; and it shall be the duty of a police officer to comply with any requirement imposed on him by virtue of this subsection.
 - 8) At the end of an investigation under this section the police officer appointed to conduct the investigation shall submit a report on the investigation to the Ombudsman.

58. Steps to be taken after investigation – criminal proceedings

- 1) The Ombudsman shall consider any report made under section 566) or 578) and determine whether the report indicates that

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a criminal offence may have been committed by a member of the police force.

- 2) If the Ombudsman determines that the report indicates that a criminal offence may have been committed by a member of the police force, he shall send a copy of the report to the Director together with such recommendations as appear to the Ombudsman to be appropriate.
- 3) Where a report is sent to the Director under subsection 2), the Ombudsman shall, at the request of the Director, ascertain and furnish to the Director all such further information in relation to the complaint or matter dealt with in the report as appears to the Director to be necessary for the discharge of his functions under the Prosecution of Offences (Northern Ireland) Order 1972.
- 4) In this section and section 59 "the Director" means the Director of Public Prosecutions for Northern Ireland.

58A. Steps to be taken after investigation – mediation

- 1) If the Ombudsman
 - a. determines that a report made under section 56(6) or 57(8) does not indicate that a criminal offence may have been committed by a member of the police force, and
 - b. considers that the complaint is not a serious one,he may determine that the complaint is suitable for resolution through mediation.
- 2) If he does so, he must inform the complainant and the member of the police force concerned.
- 3) If the complainant and the member of the police force concerned agree to attempt to resolve the complaint through mediation, the Ombudsman shall act as mediator.
- 4) Anything communicated to the Ombudsman while acting as mediator is not admissible in evidence in any subsequent criminal, civil or disciplinary proceedings.

- 5) But that does not make inadmissible anything communicated to the Ombudsman if it consists of or includes an admission relating to a matter which does not fall to be resolved through mediation.
- 6) If a complaint is resolved through mediation under this section, no further proceedings under this Act shall be taken against the member of the police force concerned in respect of the subject matter of the complaint.

59. Steps to be taken after investigation – disciplinary proceedings.

- 1) Subsection 1B) applies if
 - a. the Director decides not to initiate criminal proceedings in relation to the subject matter of a report under section 56(6) or 57(8) sent to him under section 58(2); or
 - b. criminal proceedings initiated by the Director in relation to the subject matter of such a report have been concluded.
- 1A) Subsection 1B) also applies if the Ombudsman determines that a report under section 56(6) or 57(8) does not indicate that a criminal offence may have been committed by a member of the police force and
 - a. he determines that the complaint is not suitable for resolution through mediation under section 58A; or
 - b. he determines that the complaint is suitable for resolution through mediation under that section but
 - i. the complainant or the member of the police force concerned does not agree to attempt to resolve it in that way; or
 - ii. attempts to resolve the complaint in that way have been unsuccessful.
- 1B) The Ombudsman shall consider the question of disciplinary proceedings.
- 2) The Ombudsman shall send the appropriate disciplinary authority a memorandum containing

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- a. his recommendation as to whether or not disciplinary proceedings should be brought in respect of the conduct which is the subject of the investigation;
 - b. a written statement of his reasons for making that recommendation; and
 - c. where he recommends that disciplinary proceedings should be brought, such particulars in relation to the disciplinary proceedings which he recommends as he thinks appropriate.
- 2A) In a case mentioned in subsection 1A) b., the Ombudsman shall, in considering the recommendation to be made in his memorandum, take into account the conduct of the member of the police force concerned in relation to the proposed resolution of the complaint through mediation.
- 3) No disciplinary proceedings shall be brought by the appropriate disciplinary authority before it receives the memorandum of the Ombudsman under subsection 2).
- 4) The Board shall advise the Ombudsman of what action it has taken in response to a recommendation contained in a memorandum sent to it under subsection 2); and nothing in the following provisions of this section has effect in relation to senior officers.
- 5) If
- a. a memorandum sent to the Chief Constable under subsection 2) contains a recommendation that disciplinary proceedings should be brought; but
 - b. the Chief Constable is unwilling to bring such disciplinary proceedings,
- the Ombudsman may, after consultation with the Chief Constable, direct him to bring disciplinary proceedings.
- 6) Subject to subsection 7)
- a. it shall be the duty of the Chief Constable to comply with a direction under subsection 5);
 - b. the Chief Constable may not discontinue disciplinary proceedings which he has brought in accordance with
- i. a recommendation contained in a memorandum under subsection 2); or
 - ii. a direction under subsection 5).
- 7) The Ombudsman may give the Chief Constable leave
- a. not to bring disciplinary proceedings which subsection 6)a. would otherwise oblige him to bring; or
 - b. to discontinue disciplinary proceedings with which subsection 6)b. would otherwise require him to proceed.
- 8) Regulations made in accordance with section 25. 3) or 26. 3) may establish, or make provision for the establishment of, a special procedure for any case in which disciplinary proceedings are brought
- a. where a memorandum under subsection 2) recommending the bringing of those proceedings contains a statement to the effect that, by reason of exceptional circumstances affecting the case, the Ombudsman considers that such special procedures are appropriate; or
 - b. in compliance with a direction under subsection 5).
- 9) The Chief Constable shall advise the Ombudsman of what action he has taken in response to
- a. a recommendation contained in a memorandum under subsection 2);
 - b. a direction under subsection 5).

60. Constabularies not maintained by Board

- 1) An agreement for the establishment in relation to any body of constables maintained by an authority other than the Board of procedures corresponding or similar to any of those established by virtue of this Part may, with the approval of the Secretary of State, be made between the Ombudsman and the authority maintaining the body of constables.
- 2) Where no such procedures are in force in relation to any body of constables, the

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- Secretary of State may by order establish such procedures.
- 3) An agreement under this section may at any time be varied or terminated with the approval of the Secretary of State.
 - 4) Before making an order under this section the Secretary of State shall consult
 - a. the Ombudsman; and
 - b. the authority maintaining the body of constables to whom the order would relate.
 - 5) Nothing in any other statutory provision shall prevent an authority which maintains a body of constables from carrying into effect procedures established by virtue of this section.
 - 6) No such procedures shall have effect in relation to anything done by a constable outside Northern Ireland.
- 5) The Ombudsman shall send a copy of any report under this section to
 - a. the Board and the Chief Constable; and
 - b. if the report concerns any such body of constables as is mentioned in section 60, to the authority maintaining it and the officer having the direction and control of it.
 - 6) The Secretary of State shall
 - a. lay before both Houses of Parliament a copy of every report received by him under this section; and
 - b. cause every such report to be published.
 - 7) The Ombudsman shall send to the Board any statistical or other general information which the Ombudsman considers should be brought to the attention of the Board in connection with its functions under section 24) a..

61. Reports

- 1) The Ombudsman shall, at the request of the Secretary of State, report to the Secretary of State on such matters relating generally to the functions of the Ombudsman as the Secretary of State may specify, and the Ombudsman may for that purpose carry out research into any such matters.
- 2) The Ombudsman may make a report to the Secretary of State on any matters coming to the Ombudsman's attention under this Part to which the Ombudsman considers that the Secretary of State's attention should be drawn in the public interest.
- 3) The Ombudsman shall, not later than 3 months after the end of each financial year, make to the Secretary of State a report on the discharge of the Ombudsman's functions during that year.
- 4) The Ombudsman shall
 - a. keep under review the working of this Part; and
 - b. at least once every five years, make a report on it to the Secretary of State.

61A. Reports to Chief Constable and Board

- 1) The Ombudsman may make to the Chief Constable and the Board a report on any matters concerning the practices and policies of the police which
 - a. come to the Ombudsman's attention under this Part; and
 - b. should, in the opinion of the Ombudsman, be drawn to the attention of the Chief Constable and the Board.
- 2) The Ombudsman may carry out research into any matter which may be the subject of a report under subsection 1).

61AA. Supply of information by Ombudsman to Board

- 1) The Ombudsman shall compile, and supply the Board with, such statistical information as is required to enable the Board to carry out its functions under section 33)(c)i. of the Police (Northern Ireland) Act 2000.
- 2) The Ombudsman shall consult the Board as to
 - a. the information to be supplied under subsection 1); and

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- b. the form in which such information is to be supplied.
- 3) The Ombudsman shall supply the Board with any other general information which the Ombudsman considers should be brought to the attention of the Board in connection with its functions under section 33)(c)i. of the Police (Northern Ireland) Act 2000.

62. Statements by Ombudsman about exercise of his functions

The Ombudsman may, in relation to any exercise of his functions under this Part, publish a statement as to his actions, his decisions and determinations and the reasons for his decisions and determinations

63. Restriction on disclosure of information

- 1) No information received by a person to whom this subsection applies in connection with any of the functions of the Ombudsman under this Part shall be disclosed by any person who is or has been a person to whom this subsection applies except
 - a. to a person to whom this subsection applies;
 - b. to the Secretary of State;
 - c. to other persons in or in connection with the exercise of any function of the Ombudsman;
 - d. for the purposes of any criminal, civil or disciplinary proceedings; or
 - e. in the form of a summary or other general statement made by the Ombudsman which
 - i. does not identify the person from whom the information was received; and
 - ii. does not, except to such extent as the Ombudsman thinks necessary in the public interest, identify any person to whom the information relates.
 - 2) Subsection 1) applies to
 - a. the Ombudsman; and
 - b. an officer of the Ombudsman.
- 2A) Subsection 1) does not prevent the Ombudsman, to such extent as he thinks it necessary to do so in the public interest, from disclosing in a report under section 61A)
- a. the identity of an individual, or
 - b. information from which the identity of an individual may be established.
- 3) Any person who discloses information in contravention of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

64. Regulations

- 1) The Secretary of State may make regulations
 - a. as to the procedure to be followed under this Part; and
 - b. for prescribing anything authorised or required to be prescribed by any provision in this Part.
- 2) The Secretary of State shall by regulations provide
 - a. that, subject to such exceptions and in accordance with such procedures as may be prescribed, the Ombudsman shall furnish a copy of, or of the record of, a complaint against a member of the police force to
 - i. that member;
 - ii. the complainant; and
 - iii. the appropriate disciplinary authority;
 - b. procedures for the informal resolution or mediation of complaints of such descriptions as may be prescribed, and for giving the complainant a record of the outcome of any such procedure;
 - c. procedures for giving a member of the police force, whose conduct is the subject of a complaint which falls to be resolved informally or through mediation, an opportunity to comment orally or in writing on the complaint;

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- d. for cases in which any provision of this Part is not to apply where
 - i. a complaint, other than a complaint which falls to be resolved informally or through mediation, is withdrawn;
 - ii. the complainant indicates that he does not wish any further steps to be taken; or
 - iii. the complainant fails to indicate, in response to a request from the Ombudsman to do so, whether he wishes any further steps to be taken;
 - e. for enabling the Ombudsman to dispense with any requirement of this Part;
 - f. for enabling the Ombudsman to relinquish the supervision of the investigation of any complaint under section 57;
 - g. procedures for an investigation begun under section 56 or section 57 to be continued, where the Ombudsman so directs, as if it had originally been begun under the other of those sections;
 - h. procedures for the making of complaints and the reference of complaints and other matters under this Part;
 - i. that the Ombudsman shall be supplied with such information or documents of such description as may be prescribed at such time or in such circumstances as may be prescribed;
 - j. that any action, determination or decision of a prescribed description taken by the Ombudsman shall be notified to prescribed persons within a prescribed time and that, in connection with such a notification, the Ombudsman shall have power to supply the person notified with any relevant information;
 - k. for authorising or requiring the Ombudsman to provide to the appropriate disciplinary authority information relevant to the exercise by that authority of any power of suspension under regulations made by virtue of section 252) f. or 262) e.
 - l. that the Chief Constable shall have power to delegate any functions conferred on him by or by virtue of this Part;
 - m. for enabling the Ombudsman to pay to a complainant
 - i. sums in respect of expenses incurred by him; and
 - ii. allowances by way of compensation for the loss of his time, in accordance with such scales and subject to such conditions as may be prescribed;
 - n. for enabling the Ombudsman, in such cases as may be prescribed, to make a recommendation to the Chief Constable for the payment by the Chief Constable to the complainant of compensation of such amount as the Ombudsman considers appropriate (but not exceeding such amount as may be prescribed).
- 2A) The Secretary of State may by regulations provide that, subject to such exceptions as may be prescribed
- a. this Part shall not apply to a complaint about the conduct of a police officer which took place more than the prescribed period before the date on which the complaint is made or referred to the Ombudsman under section 52. 1);
 - b. the Ombudsman shall not investigate any matter referred to him under section 55. 1), 2) or 4) if the actions, behaviour or conduct to which the matter relates took place more than the prescribed period before the date on which the reference is made;
 - c. the Ombudsman shall not at any time commence a formal investigation under section 55. 6) of any matter if the actions or behaviour to which the matter relates took place more than the prescribed period before that time;
 - d. to the extent that the subject matter of a complaint falls within the jurisdiction of

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- i. the tribunal constituted under section 65. 1) of the Regulation of Investigatory Powers Act 2000, or
- ii. a person appointed under Part IV of that Act,

the Ombudsman shall not investigate it.

- 3) Regulations under this section may authorise the Secretary of State to make provision for any purposes specified in the regulations.
- 4) Before making any regulations under this section, the Secretary of State shall consult
 - a. the Ombudsman;
 - b. the Board; and
 - c. the Police Association.

- a. to any guidance given to him by the Secretary of State with respect to such matters as are for the time being the subject of guidance under subsection 1); and

- b. in particular, but without prejudice to the generality of paragraph a., to any such guidance as to the principles to be applied in cases that involve any question of criminal proceedings.

- 5) In discharging his functions under this Part the Ombudsman shall have regard to any guidance given to him by the Secretary of State with respect to matters the disclosure of which may be prejudicial to the public interest.

65. Guidance concerning discipline, complaints, etc.

- 1) The Secretary of State may issue guidance to the Board and police officers concerning the discharge of their functions
 - a. under this Part;
 - b. under regulations made under section 25 in relation to the matters mentioned in subsection 2) e. of that section; and
 - c. under regulations made under section 26. in relation to the matters mentioned in subsection 2) d. of that section; and they shall have regard to any such guidance in the discharge of their functions.
- 2) Guidance may not be issued under subsection 1) in relation to the handling of a particular case.
- 3) A failure on the part of a person to whom guidance is issued under this section to have regard to such guidance shall be admissible in evidence on any appeal from a decision taken in proceedings under regulations made in accordance with section 25. 3) or 26. 3).
- 4) In discharging his functions under section 59 the Ombudsman shall have regard

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