

**PUBLIC SERVICES OMBUDSMAN ACT 1998****Principal Act****Act. No. 1998-48***Commencement* 10.12.1998*Assent* 10.12.1998

Amending enactments	Relevant current provisions	Commencement date
Act 1999-36	Sch. Para 2.7	4.1.2000
LN. 2000/078	Sch. Para 1.1	5.10.2000
Act 2002-08	Sch. Para 2.9.	8.8.2002

English sources

None cited

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**THE AUTHORITIES**

AN ACT TO MAKE PROVISION FOR THE APPOINTMENT OF AN OMBUDSMAN FOR THE INVESTIGATION OF ADMINISTRATIVE ACTION TAKEN BY OR ON BEHALF OF THE GOVERNMENT OF GIBRALTAR AND PROVIDERS OF CERTAIN SERVICES TO THE GENERAL PUBLIC, TO REGULATE THE FUNCTIONS THEREOF, AND FOR PURPOSES CONNECTED THEREWITH.

## PART I

### PRELIMINARY

#### **Title.**

1. This Act may be cited as the Public Services Ombudsman Act 1998.

#### **Interpretation**

2. In this Act unless the context otherwise requires -

“action” means any act or omission of an Authority relating to a matter of administration and includes any act or failure to act and cognate expressions shall be construed accordingly;

“Authority” means the bodies and entities listed or described in the Schedule;

“Ombudsman” means the person appointed pursuant to Section 3;

“officer” includes employee;

“person” means one or more individuals, or a body or bodies of persons, incorporated or unincorporated;

“person aggrieved” means a person who claims to have sustained such injustice as is mentioned in section 13(1)(a), or is entitled to make a complaint on behalf of the person aggrieved under the provisions of section 11(2);

“principal officer” means the senior executive officer of an Authority, and, in the case of the Government, shall mean the person appointed from time to time as Chief Secretary.

## PART II

### APPOINTMENT OF OMBUDSMAN & TERMS OF ENGAGEMENT

## Appointment of ombudsman

3.(1) There shall be appointed an Ombudsman for Public Services for the purpose of conducting investigations in accordance with the provisions of this Act.

(2) The Chief Minister may, from time to time, by notice in the Gazette appoint a person to be the Ombudsman.

(3) Appointments made under subsection (2) shall come into effect upon the Parliament confirming the appointment by way of resolution passed within 30 days of the appointment.

(4) A person appointed under subsection (2) shall, subject to the provisions of this Act, hold office during good behaviour for such term as shall be specified in the notice of his appointment.

(5) A member of the Parliament shall not be qualified to be appointed to the office of Ombudsman.

## Remuneration and expenses

4.(1) There shall be paid to the holder of the office of Ombudsman a salary, expenses and allowances at such rates as may, from time to time, be determined by resolution of the Parliament.

(2) The salary, expenses and allowances of the office of the Ombudsman shall be a charge on the Consolidated Fund without the need for appropriation.

## Vacating office

5.(1) Without prejudice to the provisions of this section, a person appointed under section 3(2) shall vacate office on expiry of the term for which he was appointed.

(2) A person appointed under section 3(2) shall be eligible for re-appointment on the completion of his first term of office for one or more consecutive terms none of which shall exceed 3 years.

(3) The Chief Minister may relieve a person appointed under section 3(2) of his office at that person's own request and shall remove such person from office in consequence of a resolution passed by the Parliament.

(4) The Chief Minister may declare the office of Ombudsman to have been vacated if satisfied that the person appointed to be the Ombudsman is incapable for medical reasons of performing the duties of his office.

#### **Temporary replacement**

6.(1) The Ombudsman shall not hold any position which is incompatible with the performance of his official duties or with his impartiality and independence or with public confidence therein.

(2) If, on or after the receipt of a complaint under this Act, the Ombudsman is of the opinion that the circumstances are such that, in view of any position held by him at the time, there is the possibility that a conflict could arise with his official duties under this Act or that public confidence in the office of Ombudsman may be undermined, he shall so inform the Chief Minister who shall appoint another person for the purpose of investigating that complaint only.

#### **Power to appoint staff complement**

7.(1) The Ombudsman may, with the written approval of the Chief Secretary and within the limits of allowances and expenses set by the Parliament, appoint such officers as he may determine to be necessary or convenient as to numbers and conditions of service for the purposes of performing his functions, powers and duties hereunder.

(2) Without prejudice to any other provision of this Act, the Ombudsman may authorise any officer appointed under subsection (1) to carry out any function conferred by this Act on the Ombudsman.

#### **Power to appoint acting ombudsman**

8.(1) At any time during the period of twelve months from the date on which a vacancy for the post of Ombudsman arises, the Chief Minister may, pending the appointment of a replacement Ombudsman, appoint a person to carry out the functions of the Ombudsman.

(2) A person appointed under subsection (1) shall hold office subject to such terms as the Chief Minister shall see fit and shall hold office -

- (a) until the appointment of a new Ombudsman or the expiry of the period of twelve months beginning with the date on which a vacancy for the post of Ombudsman arose, whichever occurs first; and

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(b) in other respects, in accordance with the terms and conditions of his appointment .

(3) A person appointed under subsection (1) shall, while he holds office, be treated for all purposes, as the Ombudsman.

(4) Any salary and expenses payable by virtue of an appointment under subsection (1) shall be charged on and be issued out of the Consolidated Fund.

### **Liability of ombudsman**

9. The Ombudsman shall not be liable to any suit or any proceeding for any act or thing done or omitted to be done by him in that capacity.

## **PART III**

### **INVESTIGATION OF COMPLAINTS**

#### *Application*

#### **Application of Part**

10.(1) This Part shall apply to every Authority and entity listed in the Schedule hereto.

(2) The Chief Minister may, by notice in the Gazette, amend the Schedule so as to add or remove therefrom such authority or entity as he deems appropriate.

#### *Complaints*

#### **Complaints**

11.(1) A complaint under this Act may be made by any person aggrieved.

(2) Where the person aggrieved has died or is for any reason unable to act for himself, a complaint may be made on behalf of the person aggrieved by his personal representative, Guardian ad Litem, next friend, executor or executrix, administrator or administratrix .

(3) Save in respect of the Authorities specified in Part II of the Schedule, a complaint shall not be entertained unless the act, in respect of which the complaint was laid, occurred in Gibraltar.

#### **Time limit for complaints**

12.(1) A complaint under this Act shall not be entertained unless it is made to the Ombudsman not later than six months from the day on which the person aggrieved first had notice of the matters alleged, or in the event of the death or inability of the person aggrieved to act for himself, occurring within such period of six months of the death of the person aggrieved or of his becoming so incapable.

(2) Notwithstanding the provisions of subsection (1), the Ombudsman may conduct an investigation pursuant to a complaint not made within the period therein limited, if he considers that there are special circumstances which make it proper to do so.

*Investigation of complaints*

**Power to investigate**

13.(1) Subject to the provisions of this Part, the Ombudsman may investigate any administrative action taken by or on behalf of any Authority to which this Part applies in any case where -

- (a) a written complaint is duly made to the Ombudsman by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
- (b) the Ombudsman considers that it is right and proper to conduct an investigation in respect of such complaint.

(2) In determining whether to initiate, continue or discontinue an investigation, the Ombudsman shall, subject to the provisions of this Part, act in accordance with his own discretion; and any question whether a complaint is duly made under this Act shall be determined by the Ombudsman.

**Exceptions to power**

14.(1) The Ombudsman shall not conduct an investigation under this Act in respect of any of the following matters, that is to say -

- (a) any action consisting of a decision or ruling by an Authority in respect of which the person aggrieved has or had a right of appeal, reference or review to or before any tribunal howsoever constituted by or under any enactment;

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- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law or board of enquiry (in particular any action in respect of a claim relating to medical negligence or malpractice);
- (c) any action in respect of which the person aggrieved has or had a right of complaint or review under any complaints procedures established under any enactment, except in manner and to the extent that such an enactment or complaints procedures provides for specific reference to the Ombudsman.

(2) Notwithstanding the provisions of subsection (1), the Ombudsman may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if satisfied that, in the particular circumstances, either -

- (a) by reason of the inability of the person making the complaint to bear the costs likely to be incurred, or the disproportionality of the same; or
- (b) the inability to obtain sufficient evidence to justify the commencement of proceedings; or
- (c) any other reason of any kind whatsoever that shall seem to the Ombudsman to be sufficient,

it is not reasonable or expedient to expect the person making the complaint to resort or have resorted to such other right or remedy.

#### **Duty to afford opportunity to comment**

15. Where the Ombudsman proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford to the principal officer, or other officer designated by the principal officer, of the Authority concerned, and to any person who is alleged in the complaint to have taken or authorised the act or omission complained of, an opportunity to comment on any allegations contained in the complaint.

#### **Conduct of investigations**

16.(1) Every investigation pursuant to a complaint under this Act shall be conducted in private, but except as aforesaid, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(2) Without prejudice to the generality of subsection (1), the Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented by counsel, solicitor or agent, in the investigation.

(3) The conduct of an investigation under this Act shall not affect any lawful action taken by the Authority concerned, or any power or duty of that Authority to take further action with respect to any matter subject to the investigation.

#### **Power to call evidence**

17.(1) For the purposes of any investigation under this Act, the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and in respect of the production of documents.

(2) No person shall be compelled, for the purposes of an investigation under this Act, to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

#### **Powers in relation to Ministers or officers of the Crown**

18.(1) For the purposes of an investigation under this Act, the Ombudsman may require any Minister, officer or member of the Authority concerned or any other person who, in his opinion, is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) Where –

- (a) the Chief Minister certifies that the giving of any information or the answering of any question or the production of any thing, paper or other document is likely to–
  - (i) affect the relations or dealings between the Government and any other Government or any international organisation of States or Governments or administrative bodies; or
  - (ii) have serious harmful effects on the economy; or

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- (iii) involve the disclosure of the deliberations or proceedings of the Gibraltar Council, Council of Ministers, or any committee of Ministers; or
  - (iv) prejudice the investigation or detection of offences; or
  - (v) be injurious to the public interest; or
- (b) the Governor certifies that the giving of any information on the commencement of any investigation or the production of anything, paper or other documents prejudices the internal or external security of Gibraltar,

the Ombudsman shall not require the information or answer to be given or, as the case may be, the thing, paper or other document to be produced.

(3) Notwithstanding any other provision of the Act, no person shall be required or authorised by virtue of this Act to furnish any information or answer any question relating to proceedings of the Council of Ministers or the Gibraltar Council or of any committee of Ministers or to produce so much of any document as relates to such proceedings.

(4) For the purposes of subsection (3), a certificate issued by the Chief Minister stating that any information, question, document or part of a document so relates, shall be conclusive.

(5) It is hereby declared that nothing in this Act authorises or requires the Ombudsman to question the merits of Government policy or a decision taken without maladministration by any Authority in the exercise of a discretion vested in that Authority.

## **Duty not to disclose information**

19. Information obtained by the Ombudsman or a member of his staff in the course of, or for the purposes of, an investigation under this Act, shall not be disclosed except -

- (a) for the purposes of the investigation and of any report to be made thereon under this Act; or
- (b) for the purposes of any proceedings under this Act;

and the Ombudsman or members of his staff shall not be called upon to give evidence in any proceedings, other than such proceedings as aforesaid, of matters coming to his or their knowledge in the course of an investigation under this Act.

## PART IV

### REPORTS BY THE OMBUDSMAN

#### **Annual Report to Chief Minister**

20.(1) The Ombudsman shall provide to the Chief Minister an Annual Report covering the period up to the 31st day of December of each year during his term of office.

(2) The Annual Report referred to in subsection (1) shall contain reports of all the investigations carried out, or the reasons why the Ombudsman has not conducted any particular investigation during that year.

(3) Subject to subsection (5), the Chief Minister shall, within 60 days of its submission to him by the Ombudsman, lay the Annual Report referred to in subsection (1) before the Parliament.

(4) The Chief Minister may direct the Ombudsman to amend the Annual Report to exclude any material which the Chief Minister deems in the public interest appropriate to exclude.

(5) In the event of the Chief Minister directing the exclusion of any material in the Annual Report pursuant to subsection (4), the Annual Report shall, nevertheless, contain a reference to the investigation and the fact that material has been excluded pursuant to subsection (4) on the ground of public interest at the direction of the Chief Minister pursuant to this section.

(6) As part of the Annual Report referred to in subsection (1), the Ombudsman shall submit a general report to the Chief Minister on the performance of his functions under this Act, and the Chief Minister may, from time to time, lay before the Parliament such other reports with respect to those functions as he thinks fit.

#### **Special Reports to Chief Minister**

21. If, after conducting an investigation under this Act, it appears to the Ombudsman that an injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit submit a special report upon the case to the Chief Minister who shall lay the same before the Parliament within 60 days.

#### **Report to complainant and person the subject of the complaint**

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22.(1) In any case where the Ombudsman conducts or decides not to conduct an investigation under this Act, he shall, as soon as is reasonably practicable, send to the person aggrieved a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation.

(2) In any case where the Ombudsman conducts an investigation under this Act, he shall also send a report of the results of the investigation to the principal officer of the Authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the act or omission complained of.

### **Power of Chief Minister to prevent disclosure of information in reports**

23.(1) The Chief Minister may serve on the Ombudsman a notice in writing, with respect to any document or information specified in the notice, or any class of documents or information so specified, that the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the public interest.

(2) Where a notice is served under subsection (1), nothing in this Act shall be construed as authorising or requiring the Ombudsman or member of his staff to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

### **Effect on law of defamation**

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

- (a) the publication of any matter by the Ombudsman in making a report to the Parliament for the purposes of this Act;
- (b) the publication of any matter by a member of the Parliament in communicating with the Ombudsman or his staff for those purposes, or by the Ombudsman or members of his staff in communicating with a member of the Parliament for those purposes;
- (c) the publication by a member of the Parliament to the person aggrieved of a report or statement in respect of the complaint in pursuance of this Part;
- (d) the publication by the Ombudsman to the person aggrieved of a report to that person in pursuance of this Part.

- (e) information obtained by the Ombudsman or members of his staff in the course of, or for the purposes of, an investigation except -
  - (i) for the purposes of the investigation and of any report to be made thereon;
  - (ii) for the purposes of any proceedings for an offence under the Official Secrets Acts alleged to have been committed in respect of information obtained by the Ombudsman or any member of his staff by virtue of this Act or for an offence of perjury alleged to have been committed in the course of an investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings; or
  - (iii) for the purposes of any proceedings under Section 15 or 16 of this Act,

and the Ombudsman and members of his staff shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.

## PART V

### FINAL PROVISIONS

#### **Offence of obstruction**

25.(1) Any person who, without lawful excuse, obstructs the Ombudsman or any member of his staff in the performance of their duties under this Act, or is guilty of any act or omission in relation to any investigation under this Act which, if that investigation were a proceeding in a court of law, would constitute contempt of court, shall be guilty of an offence.

(2) Where an offence is certified under this section, the court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

#### **Regulations**

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26. The Chief Minister may from time to time make regulations for all or any of the following purposes -

- (a) prescribing forms of applications and the procedure to be followed with respect to any matter under this Act;
- (b) prescribing any additional information to be submitted in support of any application under this Act;
- (c) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

**SCHEDULE**

Section 10 & 11

**THE AUTHORITIES**

1. GOVERNMENT.

1.1. All Gibraltar Government departments and agencies, including, but without prejudice to the generality of the foregoing, the Royal Gibraltar Police.

2. STATUTORY BODIES.

2.1. Gibraltar Health Authority.

2.2. Gibraltar Broadcasting Corporation.

2.3. Gibraltar Development Corporation Limited (GDC), including the Employment and Training Board (ETB), the Tourism Board and any other Sections of the GDC.

2.4. The Development and Planning Commission.

2.5. The Transport Commission.

2.6. The Traffic Commission.

2.7. The Elderly Care Agency.

2.8

2.9 The Social Services Agency.

3. PUBLIC UTILITIES AND CONTRACTORS.

Any person, company or other entity providing one or more of the following services to the Government of Gibraltar or to the general public under the terms of a contract with or a licence issued by the Crown or a statutory body.

3.1. supply of telecommunications services;

3.2. supply of water services;

3.3. collection of any moneys payable to the Government;

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- 3.4. the operation of any Registry;
- 3.5. environmental or public health control services;
- 3.6. clamping, tow-away or traffic management;
- 3.7. the cleaning or upkeep of any part of the public highway or planted areas adjacent thereto;
- 3.8. refuse collection or incineration services;
- 3.9. car parking services;
- 3.10. the management of the Alameda Gardens, the John Mackintosh Hall, the Gibraltar Museum, the Gibraltar Airport Terminal or any site, property or facility belonging to the Crown;
- 3.11. property management, property agency, rates collection services and land property services;
- 3.12. immigration services and entry point control and terminal security;
- 3.13. philatelic supplies;
- 3.14. emergency and transfer ambulance services.

## **PART II**

- 4. OTHER BODIES.
  - 4.1. Calpe House, London, and Calpe House Trust;
  - 4.2. the Gibraltar Government representative office in London;
  - 4.3. the Gibraltar Government representative office in Brussels;