

SUBSIDIARY LEGISLATION 385.01

**COMMISSIONERS FOR ADMINISTRATIVE
INVESTIGATIONS (FUNCTIONS) RULES**

1st August, 2012;
1st November, 2013

LEGAL NOTICE 250 of 2012, as amended by Act II of 2020.

1. (1) The title of these rules is the Commissioners for Administrative Investigations (Functions) Rules. Citation and commencement.
- (2) (a) These rules shall come into force on the 1st of August, 2012, with the exception of the definition of "education provider" and Part III of these rules.
- (b) The definition of "education provider" and Part III of these rules shall come into force on the 1st November, 2013.

Part I - Preliminary Provisions

2. (1) In these rules, unless the context otherwise requires -
- "the Act" means the Ombudsman Act; Definitions.
Amended by:
II.2020.28;
XXIX.2019.71.
Cap. 385.
- "the Authority" means the Planning Authority or the Environment and Resources Authority established by the Development Planning Act and the Environment Protection Act, respectively; Cap. 552.
Cap. 549.
- "the Commissioner" means a Commissioner for Administrative Investigations appointed in terms of article 17A of the Act;
- *"education provider" means a public provider of further or higher education, whether established under the Education Act or otherwise, and includes the following providers and any company, institute, centre or any other body established by them: Cap. 605.
- (a) the University of Malta;
- (b) the Malta College of Arts, Science and Technology;
- (c) the Institution of Tourism Studies; and
- (d) a public or private provider acting for or on behalf of a public provider of further or higher education;
- "function" shall have the same meaning as is assigned to it in article 3(1) of the Interpretation Act; Cap. 249.
- "further education" shall have the same meaning as is assigned to it in article 2 of the Act; Cap. 327.
- "health service" means a health service provided by the Government, other authority, body or person to whom the Act

*this definition will come into force on 1st November, 2013.

applies, whether such service is preventive or curative, and includes:

- Cap. 94.
- (a) a hospital, an establishment and service mentioned in articles 6 and 16(2) of the Department of Health (Constitution) Ordinance or any law substituting it which sets out or defines such health service;
 - (b) a pharmacy, laboratory service, community health care service, clinic and any other service that forms part of a public health service; and
 - (c) a health service as aforesaid which is provided for or on behalf of Government through the private sector;

Cap. 464. "health care professional" means a person who is authorised to practise a health care profession regulated in accordance with the Health Care Professions Act;

Cap. 327. "higher education" shall have the same meaning as is assigned to it in article 2 of the Act.

(2) Unless the context otherwise requires, expressions used in these rules shall have the same meaning assigned to them in the Act.

Part II - Functions Applicable to all Commissioners for Administrative Investigations

Complaints to be investigated by Commissioners to be addressed to the Ombudsman.

3. (1) All complaints in respect of sectors that fall under the jurisdiction of a Commissioner for Administrative Investigations appointed in terms of article 17A of the Act shall be submitted in the first instance to the Ombudsman.

(2) Where a complaint is addressed to, or received by a Commissioner without having been submitted to the Ombudsman, the said Commissioner shall forward such complaint to the Ombudsman so that the Ombudsman may proceed in accordance with the provisions of rule 4.

Assignment of complaints to be investigated by a Commissioner.

4. (1) The Ombudsman may assign complaints received in terms of rule 3 for investigation to a particular Commissioner.

(2) In assigning a complaint as aforesaid, the Ombudsman shall consider the nature of the complaint and the functions assigned to Commissioners who are in office from time to time and as provided for in the Act and in these rules.

(3) In carrying out his duties under sub-rules (1) and (2), the Ombudsman shall comply with the provisions of the Act and these rules and any question whether a complaint is duly assigned to a Commissioner shall be determined by the Ombudsman.

(4) Where the Ombudsman is of the view that a complaint does not fall within the functions of a Commissioner, the Ombudsman shall in his discretion either investigate that complaint himself or else delegate the investigation thereof to another Commissioner.

(5) In the case of complaints which fall within the functions of two or more Commissioners, the Ombudsman shall decide to which Commissioner the complaint shall be assigned and, for all intents

and purposes of law, the said Commissioner shall have jurisdiction to investigate such assigned complaint.

(6) Where a complaint falls within the functions of one Commissioner but contains elements which go beyond those functions, the Ombudsman may decide to delegate that part of the complaint which goes beyond the Commissioner's functions as set out in these rules to that same Commissioner, or to another Commissioner, or the Ombudsman may decide to investigate the complaint himself.

5. (1) In the exercise of their functions under the Act or any other law and these rules, it shall be the duty of Commissioners to comply with any Code of Practice and Procedure which the Ombudsman may from time to time set out for this purpose.

Duty of Commissioners in the exercise of their functions.

(2) In determining whether to initiate, continue or discontinue an investigation under the Act, a Commissioner shall act autonomously and in accordance with the procedures and processes laid down by the Act and by these rules.

(3) Where there is no evidence of maladministration, a Commissioner shall not investigate further a complaint.

6. (1) Own initiative investigations that fall within the functions of a Commissioner shall be carried out by such Commissioner following consultation with the Ombudsman.

Regulation of own initiative investigations.

(2) In an own initiative investigation due to be carried out by two or more Commissioners which in substance concerns the same merits, the Ombudsman shall entrust such investigation to the Commissioner considered most suited for the purpose of carrying out such investigation.

7. A Commissioner to whom a complaint has been assigned or an investigation has been entrusted may consult another Commissioner in respect of the particular merits of the matters being investigated.

Consultation amongst Commissioners.

8. Nothing in these rules shall preclude the Ombudsman from delegating to a Commissioner the investigation of any complaint or element in a complaint which goes beyond the functions of a Commissioner as set out in these rules.

Delegation of functions by Ombudsman.

9. (1) If a situation arises where it appears that a Commissioner may have a conflict of interest in the exercise of the functions of his office, the Commissioner shall consult with the Ombudsman who shall provide guidance in accordance with the Code of Practice and Procedure referred to in rule 5(1).

Conflict of interest.

(2) Where the Ombudsman concludes that such a conflict of interest exists, he shall invite the Commissioner subject of the allegation to such a conflict of interest to remedy the conflict.

(3) The Commissioner shall comply with the Ombudsman's decision. The said decision shall be final.

10. The term of office of a Commissioner shall be that provided in articles 5 and 17C of the Act.

Term of office of Commissioners.

Functions of Commissioners.	11. Each Commissioner shall have the functions set out in these rules in addition to those set out in article 13 of the Act, in so far as the latter provision applies <i>mutatis mutandis</i> to the Commissioners.
Powers of Commissioners.	12. For the purposes of an investigation pursuant to a complaint, the Commissioner shall have the same powers <i>mutatis mutandis</i> as the Ombudsman has under article 19 of the Act.
Time limit for complaints	13. The Commissioner shall not entertain a complaint, unless it is made not later than six months from the day in which the complainant first had knowledge of the matters complained about; but the Commissioner may, in his discretion, conduct an investigation of such complaint if he considers that there are special circumstances which make it proper for him to do so.
Saving the operation of internal complaints mechanisms.	14. A Commissioner shall not replace internal complaints mechanisms.
Ombudsman's decisions under this Part.	15. Where the Ombudsman has decision-making powers under this Part, his decision shall be final.
	Part III - Commissioner for Education*
Commissioner for Education.	16. A Commissioner for Administrative Investigations appointed in terms of article 17A(2) of the Act to investigate matters related to the specialised area of further or higher education shall be called the "Commissioner for Education".
Functions of Commissioner for Education.	17. The Commissioner for Education shall investigate complaints related to a service provided by an education provider.
Matters excluded from the jurisdiction of the Commissioner for Education.	18. (1) The Commissioner for Education shall have no functions relating to the exercise of academic jurisdiction unless there is evidence of maladministration. (2) Unless there is evidence of maladministration, the Commissioner may not investigate any policy or decision taken by academic bodies on matters concerning academic provision, course management issues (such as examination results, degree classification, grades and grade review, academic supervision of students, quality and organization of academic teaching, academic teaching load, decisions by academic panels or appeal bodies, the nature or content of courses, academic awards, etc.), academic misconduct, academic integrity, academic study or research programmes, academic policies and practices, academic regulations and course requirements.
	Part IV - Commissioner for Environment and Planning
Commissioner for Environment and Planning.	19. A Commissioner for Administrative Investigations appointed in terms of article 17A(2) of the Act to investigate matters related to the specialised areas of environment and development planning shall be called "Commissioner for Environment and Planning".

*this Part (rules 16, 17 and 18) will come into force on 1st November, 2013.

20. (1) The Commissioner for Environment and Planning shall investigate complaints related to the workings of the Planning Authority and the Environment and Resources Authority in the exercise of their functions under the Development Planning Act and the Environment Protection Act, respectively.

Functions of
Commissioner for
Environment and
Planning.
Cap. 552.
Cap. 549.

(2) Such function shall also extend to those services which the said Authority outsources and which are provided on its behalf.

Part V - Commissioner for Health

21. A Commissioner for Administrative Investigations appointed in terms of article 17A(2) of the Act to investigate matters related to the specialised area of health shall be called "Commissioner for Health".

Commissioner for
Health.

22. The Commissioner for Health shall investigate complaints related to a health service.

Functions of
Commissioner for
Health.

23. The Commissioner for Health shall not investigate any action taken by health care professionals in the exercise of their medical and clinical judgment for the diagnosis of illness or for the treatment of patients; nor shall he investigate any technical merits of decisions taken by health care professionals, unless there is in either case proof of maladministration by the person providing the health service in the exercise of his professional competence or professional discriminatory action.

Matters excluded
from the
jurisdiction of the
Commissioner for
Health.
