

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, SUNDAY, 12th JUNE, 2022.

PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 12th June, 2022.

No. PA/Khyber Pakhtunkhwa/Bills-211/2022/16120. The Khyber Pakhtunkhwa Provincial Ombudsman (Amendment) Bill, 2022 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 10th June, 2022 and assented to by the Governor of the Khyber Pakhtunkhwa on 12th June, 2022 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA PROVINCIAL OMBUDSMAN (AMENDMENT) ACT, 2022.
(KHYBER PAKHTUNKHWA ACT NO. XXVI OF 2022)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa. (Extraordinary), dated the 12th June, 2022)

AN
ACT

further to amend the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010.

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 (Khyber Pakhtunkhwa Act No. XIV of 2010), for the purposes hereinafter appearing:

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. **Short title and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Provincial Ombudsman (Amendment) Act, 2022.

(2) It shall come into force at once.

2. **Amendment of section 2 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the Khyber Pakhtunkhwa Provincial Ombudsman Act, 2010 (Khyber Pakhtunkhwa Act No. XIV of 2010), hereinafter referred to as the said Act, in section 2, after clause (b), the following new clause shall be inserted, namely:

“(b-1) **“Law Department”** means the Law, Parliamentary Affairs and Human Rights Department of Government.”

3. Amendment of section 3 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 3,-

(a) for sub-section (2), the following shall be substituted, namely:

“(2) The Provincial Ombudsman shall be a person, who has been a retired judge of the High Court or a retired civil servant in BPS-20 or above having remained the head of a Government Department or a public sector organization for at least three years.”; and

(b) for sub-section (4), the following shall be substituted, namely:

“(4) The Provincial Ombudsman shall, in all matters, perform his functions and exercise his powers fairly, honestly and diligently, in accordance with law.”.

4. Amendment of section 4 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 4, for sub-section (1), the following shall be substituted, namely:

“(1) Subject to the provisions of this Act, the Provincial Ombudsman shall hold office for a period of three years or till the age of sixty five years, whichever is earlier and shall not be eligible, for re-appointment or extension, as the case may be, under any circumstances:

Provided that the new Provincial Ombudsman shall be appointed within a period of ninety days from the date of retirement or permanent vacation of his office due to any other reason.”.

5. Amendment of section 6 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 6,-

(a) for sub-section (2), the following shall be substituted, namely:

“(2) The Provincial Ombudsman shall hold office during the pleasure of the Government.”; and

(b) sub-sections (3) and (4) shall be deleted.

6. Amendment of section 7 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 7, the following shall be substituted, namely:

“7. Acting Ombudsman.---If the office of the Provincial Ombudsman is vacant due to any reason, the Chief Minister may appoint an acting Ombudsman for a period not exceeding ninety days in any case.”.

7. **Insertion of new section in the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, after section 7, the following new section shall be inserted, namely:

“7A. Grievance Commissioner.---(1) In respect of any Agency, against which a large number of complaints is received in the office of the Provincial Ombudsman, the Provincial Ombudsman may direct the Agency to designate one of its officers, not below the rank of BPS-19, as a Grievance Commissioner.

(2) For the purpose of sub-section (1), the Grievance Commissioner shall perform such functions as may be assigned to him by the Provincial Ombudsman.”

8. **Amendment of section 8 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, in section 8,-

(a) for sub-section (1), the following shall be substituted, namely:

“(1) The members of the staff of Provincial Ombudsman shall be appointed in the manner as may be prescribed.”; and

(b) sub-section (2) and (4), shall be deleted.

9. **Amendment of section 9 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, in section 9,-

(a) for sub-section (1), the following shall be substituted, namely:

“(1) The Provincial Ombudsman may, on a complaint made by any aggrieved person, undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or functionaries:

Provided that the Provincial Ombudsman shall not have any jurisdiction to investigate or inquire into any matter which is subjudice before a court or a tribunal of competent jurisdiction on the date of the receipt of a complaint in this behalf.”; and

(b) for sub-section (5), the following shall be substituted, namely:

“(5) The principal seat of the office of the Provincial Ombudsman shall be at Peshawar however, the Provincial Ombudsman may hold proceedings at any appropriate places in the Province as he may deem appropriate in the public interest.”

10. **Amendment of section 11 of the Khyber Pakhtunkhwa Act No. XIV of 2010.**---In the said Act, for section 11, the following shall be substituted, namely:

“11. Recording of findings.---(1) After having adjudicated the matter and concluded the proceedings, the Provincial Ombudsman is of the opinion that the act of the Agency concerned amounts to maladministration, he shall record his findings and may-

- (a) direct the Agency to rescind, modify or revoke its decision or order, as the case may be; or
- (b) remand back the case to the Agency with direction to reconsider and determine the same finally in accordance with relevant law, rules and merit; or
- (c) issue directions to the Agency for disposing of a matter on such terms as may be recorded in the findings; or
- (d) direct the Agency to take any other steps as the Provincial Ombudsman may specify.

(2) If, after conducting an investigation, it appears to the Provincial 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 on the case before Government through the Law Department.”.

11. Amendment of section 12 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 12, the following shall be substituted, namely:

“12. Implementation of findings.---(1) The Agency shall implement the findings of the Provincial Ombudsman within forty five days from the date of receipt of the findings by it. The Agency shall accordingly inform the Provincial Ombudsman of action taken in pursuance of the findings.

(2) Notwithstanding anything contained in sub-section (1), where the Agency feels difficulty in implementing the findings or considers that the findings recorded by the Provincial Ombudsman are not well founded, it may file a review petition with the Provincial Ombudsman within forty five days from the day on which the findings are received to it.

(3) The Provincial Ombudsman, if after considering the grounds of the Agency in the review petition, is satisfied that no case of maladministration is made out, he may alter, modify or recall his findings.

(4) Where on considering the review petition, the Provincial Ombudsman determines that the stance of the Agency is not well grounded and that the findings have been rightly recorded, he shall pass an order dismissing the review petition. Upon the order of dismissal, the Agency shall implement the findings.

12. Amendment of section 13 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 13, the following shall be substituted, namely:

“13. Powers of Government.---(1) In case of any difficulty in implementation of the findings of the Provincial Ombudsman, the Agency concerned may, with prior consultation of Law Department, submit a self contained case to Government for final order in the manner as provided in the Khyber Pakhtunkhwa Government Rules of Business, 1985.

(2) The decision of the Government under sub-section (1) shall be final and binding.”.

13. Insertion of new section 13A in the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, after section 13 as so amended, the following new section shall be inserted, namely:

“13A. Instructions etc. with regards to implementation of findings.---The Law Department, with the approval of the Chief Minister, Khyber Pakhtunkhwa, shall issue such instructions and devise such mechanism as may appear to it to be necessary for the implementation of findings of the Provincial Ombudsman.”.

14. Deletion of sections 15 and 16 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, sections 15 and 16 shall be deleted.

15. Substitution of section 20 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 20, the following shall be substituted, namely:

“20. Appointment of advisors etc.---The Provincial Ombudsman may, for the purpose of this Act, appoint advisors, consultants, fellows, bailiffs, interns, commissioners and experts in consultation with the Law Department in the manner as may be prescribed.”.

16. Amendment of section 25 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 25, the following shall be substituted, namely:

“25. Remuneration of the advisors, consultants, etc.---The Provincial Ombudsman, in consultation with the Law Department, may fix honorarium or remuneration of advisors, consultants, fellows, experts, interns and other persons engaged by him from time to time for services rendered under section 20.”.

17. Amendment of section 27 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, in section 27,-

(a) in sub-section (1), after the word “Governor”, the words and comma “through the Law Department” shall be added;

- (b) in sub-section (2), after the words "from time to time", the words and comma "through the Law Department" shall be inserted; and
- (c) in sub-section (5), for the words "Provincial Assembly" the word "Government" shall be substituted.

18. Substitution of section 31 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 31, the following shall be substituted, namely:

"31. Representation to Governor.---(1) Any person aggrieved by the findings of the Provincial Ombudsman may, within forty five days of the findings, make representation to the Governor in the manner, as may be prescribed, and the Governor may pass such orders thereon as he may deem fit.

(2) The operation of the impugned findings shall remain suspended till the final disposal of the representation made under sub-section (1)."

19. Deletion of section 32 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, section 32 shall be deleted.

20. Substitution of section 35 of the Khyber Pakhtunkhwa Act No. XIV of 2010.---In the said Act, for section 35, the following shall be substituted, namely:

"35. Power to make rules.---Government may make rules for carrying out the purposes of this Act."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(KIFAYAT ULLAH KHAN AFRIDI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa