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**An Bille Cosanta (Leasú), 2020**  
**Defence (Amendment) Bill 2020**

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*Meabhrán Mínitheach agus Airgeadais*  
*Explanatory and Financial Memorandum*

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**AN BILLE COSANTA (LEASÚ), 2020  
DEFENCE (AMENDMENT) BILL 2020**

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**EXPLANATORY AND FINANCIAL MEMORANDUM**

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**Purpose of the Bill**

The purpose of this Bill is to make a number of miscellaneous amendments to the Defence Act 1954.

**Provisions of the Bill**

*Section 1 (Definitions)* provides definitions for key terms used in the Bill.

*Section 2 (Insertion of new section 17A in Principal Act)* inserts a new section (section 17A) into the Defence Act 1954 to permit the delegation by the Minister for Defence of a limited degree of control and authority over a Defence Forces contingent (referred to as ‘operational control’ in this amendment) deployed as part of an international force to the Force Commander of that force. The amendment will not alter the current command structure within the Irish Defence Forces but merely underpins current practice in relation to day to day operational control of contingents of the Permanent Defence Force (PDF) engaged in international operations.

The amendment provides that a delegation of operational control by the Minister for Defence to the Force Commander will be in writing and may be subject to such exceptions and limitations as the Minister may determine, having had regard to such requirements as are necessary for the efficient operation of the mission concerned. Any delegation of operational control will provide as follows:

- (i) in so far as is necessary to ensure the efficient operation of a mission, provide that each member of the Defence Forces assigned to an international force led by a Force Commander shall comply with every lawful order issued to him or her by a member of the international force in his or her military chain of command, subject to any exclusions as may be specified in the written delegation;
- (ii) provide that the military police component of the international force under the authority of the Force Commander may arrest and detain a member of the Defence Forces provided such member is handed over as soon as possible to the Irish contingent commander or the designated senior Irish officer;
- (iii) provide that each member of the Defence Forces in respect of whom a delegation of operational control is made shall cooperate with the military police component of the international force;
- (iv) include any other ancillary provisions in relation to the delegation of operational control as the Minister may deem to be necessary for the efficient operation of the mission to which the delegation refers.

The section also includes definitions for key terms used in the section.

**Section 3 (Non-enlistment of minors) and section 7 (Amendment of section 4 of the Defence (Amendment) (No. 2) Act 1979)** includes a series of amendments to remove the references in the Defence Act to the enlistment of persons under the age of 18.

Under regulations made by the Minister under the Defence Act, persons under the age of 18 are not allowed to enlist in either the Permanent Defence Force or the Reserve Defence Force. However, the Defence Act still contains references to the enlistment of minors. These amendments remove these provisions.

The section also provides for the repeal of section 76 (Discharge of persons under eighteen) and section 77 (Discharge of apprentices) of the Defence Act. Both of these sections deal with the discharge of persons under the age of eighteen who have enlisted in the Defence Forces.

These amendments will give full effect in the Defence Act to the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict.

**Section 4 (Re-enlistment of formerly enlisted persons)** includes a number of amendments to the Defence Act 1954 to facilitate the re-enlistment of suitably-qualified former enlisted members of the Defence Forces to fill certain positions.

Section 53 of the Defence Act provides for the enlistment of persons in the Permanent Defence Force (PDF).

The purpose of this section is to amend the Defence Act to provide an alternative means of enlistment in the PDF for a person who previously served in the PDF. It will only apply to a former enlisted person who has completed the full term of his or her original enlistment (including any required service with the Reserve Defence Force) or who has been discharged by purchase under the provisions of section 75 of the Defence Act. The intention is that this provision will be used to enlist suitably-qualified former enlisted persons in the PDF to fill certain positions. Any person enlisted under this section will have particular skills and expertise required by the Defence Forces which cannot be met through the use of existing military resources.

Persons enlisted under this section will be enlisted for a specified period and for a specified purpose (involving the use of a particular skill or area or expertise) and will not be subject to the normal service requirements which apply to persons enlisted under section 53. In addition, any person enlisted under this section will be required to meet general eligibility criteria (including in relation to physical fitness) to ensure that he or she will be capable of performing normal military duties (including, if necessary, in relation to overseas service).

Section 58 of the Defence Act will be amended to require persons enlisted under this section to take an oath or make a declaration on enlistment.

**Section 5 (Amendment of section 178E of Principal Act (appeal to summary court-martial))** amends the current procedure in relation to bringing forward an appeal to a summary court-martial.

The current arrangements as outlined in section 178E(3)(b) can cause difficulties if a military judge has insufficient time to consider an application for an extension of the period to bring forward an appeal (for example if an application is brought towards the end of the 'initial period' (as defined in section 178E(3)(a)) and the military judge is unavailable at short notice to consider the request).

To rectify the situation, section 178E(3)(b) is being amended to provide that a summary court-martial may consider an application for an extension of time to bring forward an appeal provided any such application is brought before the end of the “initial period”. There will be no requirement on the summary court-martial to be available to consider the application for an extension before the end of the “initial period” (that is, the summary court-martial will have the flexibility to consider the application and issue a decision after the expiry of the “initial period”).

The requirement that any application for an extension of time to bring forward an appeal must be made within the ‘initial period’ (that is, within 7 days from the date on which the punishment was awarded) is retained.

**Section 6 (*Miscellaneous amendments of Principal Act*)** provides for the restatement in modern form of section 74 of the Act and the repeal of section 318 of the Act which is redundant.

**Section 8 (*Short title and commencement*)** is a standard provision relating to the short title of the Bill and its commencement.

#### **Financial Implications**

There are no additional costs to the Exchequer associated with this Bill.

*An Roinn Cosanta,*

*Eanáir, 2020.*