

Oireachtas Joint Committee on Foreign Affairs and Defence

Opening statement regarding the General Scheme of the Defence (Amendment) Bill 2023

30 January 2024

Introduction

Thank you Chair and Committee members for the opportunity to discuss the General Scheme of the Defence (Amendment) Bill.

My name is Bernie Maguire and I am an Assistant Secretary in the Department of Defence with responsibility for Defence and Security Policy and Legislation. I am joined today by my colleagues Assistant Secretary Clare Tiernan who has responsibility for Defence Capability (People) and Acting Assistant Secretary Cathal Duffy who leads on the implementation of the recommendations of the Independent Review Group. Billy Tuohy from the Department's Legislation Branch is also joining me this afternoon.

Background

As Committee members will be aware, a number of high-profile reviews have been undertaken on matters relating to the Defence sector in recent years. Key reports include those of the Commission on the Defence Forces and the Independent Review Group on Dignity and Equality Issues in the Defence Forces and we have provided members with links to these reports in advance of today's session.

The Strategic Framework on the Transformation of the Defence Forces, published in September 2023, brings together into one overarching document the immediate actions to be taken to support the transformation of the Defence Forces. As members may be aware, the Strategic Framework includes a commitment to bring forward two separate Bills this year to amend the Defence Acts. My colleagues and I are here today to discuss the first of those Bills.

In summary, it is intended that this extensive Bill, which covers many aspects of the Defence Acts will:

- give effect to a key recommendation of the Independent Review Group on Dignity and Equality issues in the Defence Forces (IRG) in relation to the establishment on a statutory basis of an External Oversight Body of the Defence Forces;

- establish a statutory framework for the Minister for Defence to consent to the military representative associations to associate with ICTU and to impose the conditions that will apply to the granting of any such consent; and
- bring forward a number of miscellaneous amendments to the Defence Acts and an amendment to the Ombudsman (Defence Forces) Act 2004.

The General Scheme was approved by Government before the end of 2023 and the drafting of the Bill has now commenced. As is normal practice during the legislative process, the wording of the General Scheme will be refined and modified as the Bill is drafted over the next few months by Parliamentary Counsel. There will also be an opportunity during this period to examine and consider views expressed in relation to the legislation.

Main Provisions of the Bill

I will now provide the Committee with an overview of the main provisions of the proposed Bill.

Part 1 – Preliminary and General Matters

This includes standard sections regarding the title of the Bill, commencement provisions and definition of key terms.

Part 2 - External Oversight Body

This Part arises from the recommendation of the Independent Review Group (IRG) which was established to examine issues relating to allegations of discrimination, bullying, harassment, sexual harassment and any form of sexual misconduct in the Defence Forces. The Government agreed to progress, as a priority, the Report's thirteen recommendations.

In its Report, the IRG concluded that to implement a successful culture change programme, a new governance and oversight structure is needed to increase transparency and accountability and to hold the leadership of the Defence Forces to account for progress on culture change.

Following publication of the IRG Report in March 2023, and having accepted its recommendations, the External Oversight Body was established last April, on a non-statutory basis initially, and its Terms of Reference were approved and noted by Government on 12 July 2023. This legislation seeks to put the External Oversight Body on a statutory footing.

It is intended that the External Oversight Body will have all the powers typically held by a statutory body. The Heads draw upon the wording of recent enactments providing for the

establishment of state bodies, including, in part, the provisions in the Policing, Security and Community Safety Bill 2023 relating to the Policing Authority.

Head 6 sets out the proposed functions of the External Oversight Body. The Body will oversee, monitor and advise the Minister for Defence in relation to the implementation by the Defence Forces of a range of matters concerning the general area of human resource management. The matters in question include the recruitment, induction, training, education, and performance management of members of the Defence Forces. There will also be oversight of procedures put in place by the Defence Forces to ensure compliance with legislative requirements arising from various enactments concerning employment equality matters.

The Head also includes provisions enabling the External Oversight Body to conduct reviews in relation to specific matters concerning the human resource management of the Defence Forces and to make recommendations to the Minister.

Provision is made to enable the Minister for Defence to consult with the External Oversight Body in relation to the selection process for any appointments to the rank of Brigadier General or above (to include appointments to the posts of Chief of Staff or Deputy Chief of Staff) and also in relation to the selection process for any appointments to senior civilian positions (principal officer equivalent or higher) with the Defence Forces.

Head 8 includes provisions in relation to the membership of the External Oversight Body. This Head reflects the recommendations of the IRG relating to the composition of the membership of the Body. The Head provides that the current members of the interim non-statutory Oversight Body will be appointed as the initial members of the statutory External Oversight Body.

The Minister for Defence will be responsible for the provision of staffing, equipment and other services as may be required by the External Oversight Body to carry out its functions (Heads 14 and 21 refer). The Body will be funded by means of an annual grant-in-aid provided by the Minister for Defence (Head 19).

In common with other State bodies, the External Oversight Body will be required to produce a Strategy Statement (Head 16) and an Annual Report (Head 17).

Part 3 – ICTU

This Part of the General Scheme sets out amendments to the Defence (Amendment) Act 1990 to provide a statutory basis for the Minister for Defence to authorise the Permanent Defence Force representative associations to associate with ICTU. The Minister will have the power to impose conditions when consenting to any such association or to vary or withdraw any

consent previously given. This Part also provides for a related amendment to section 103 of the Defence Act 1954.

The amendments reflect the commitment to implement the recommendation of the Commission on the Defence Forces that the Permanent Defence Forces Representative Associations should be facilitated if they wish to pursue associate membership of ICTU, as well as a commitment given in June 2022 as part of High Court settlements with the military representative associations to make such statutory provision. On foot of the High Court cases, the military representative associations were allowed on a temporary basis to associate with ICTU pending the introduction of legislation. Undertakings were given at the time by the Permanent Defence Force representative associations not to engage in certain specified activities. The General Scheme incorporates the prohibited activities set out in the High Court settlement of June 2022 as an amendment to the Defence (Amendment) Act 1990 (Head 26). The prohibited activities will apply to the Permanent Defence Force representative associations representing both commissioned and enlisted personnel. The provisions regarding associate ICTU membership will facilitate the attendance of the Permanent Defence Force representative associations at future national pay talks.

On a related point, the Defence (Amendment) Act 1990 will also be amended to expressly provide that officers holding certain positions within the Defence Forces shall be prohibited from membership of a representative association. The officers in question are: (i) the Director of Military Prosecutions; and (ii) the Military Judge. Under the Defence Acts, these officers are required to be independent in the exercise of their functions and they do not form part of the military chain of command. The provisions are necessary to underpin the independence of these office holders.

Part 4 - Miscellaneous Amendments

Part 4 of the Bill will include a number of miscellaneous amendments to the Defence Acts to provide for the following matters:

- (i) **Protection of the term “Óglaigh na hÉireann”:** Head 29 amends the Defence Act 1954 to provide that it shall be an offence for a person without the authority of the Minister for Defence to use the term “Óglaigh na hÉireann”, or any words closely resembling this term, as the name, title or description, or styling of any organisation, group, association or body. A person who commits an offence under this new provision shall be liable on summary conviction to a class D fine.

The Head reflects the thrust of the Private Member’s Bill (*“the Defence (Restriction on Use of Certain Titles) Bill 2021”*) which was introduced into the Seanad by Senator Malcolm Byrne and supported by the Government at Second Stage.

- (ii) **Compulsory Random Drug Testing of members of the Defence Forces (Heads 30 and 31):** this Head will ensure that there is a robust statutory basis for the existing compulsory random testing programme for members of the Defence Forces. The Heads reflect provisions relating to members of An Garda Síochána, which were enacted as part of the Garda Síochána (Functions and Operational Areas) Act 2022.
- (iii) **Removing the requirement for the Minister to prescribe rates and scales of pay for members of the Defence Forces (Heads 32 and 33):** These Heads are intended to improve administrative efficiency by removing the current requirement to amend a statutory instrument on each occasion that the pay scales of members of the Defence Forces are revised. You may wish to note that updated pay scales will be published on a website maintained by the Minister.
- (iv) **Amending the provisions regarding re-engagement of enlisted persons (Heads 34 to 37):** The purpose of these Heads is to amend the restrictive provisions in sections 64 and 67 of the Defence Act 1954 concerning the re-engagement of enlisted members of the Defence Forces. The proposed amendment will allow for greater flexibility in relation to the length of the period of re-engagement that may be approved. The amendment will remove an obstacle to increasing the maximum age limits for enlistment in the Permanent Defence Force.
- (v) **Amendment of section 184F of the Defence Act 1954 (Head 43):** Section 184F provides for the appointment by the Director of Military Prosecutions (referred in the Defence Act as the 'Director') of suitably-qualified officers of the Defence Forces to act as prosecuting officers for the purposes of courts-martial. The purpose of this Head is to enable the Director to have the option of appointing any suitably-qualified member (enlisted persons as well as officers) of the Defence Forces as well as civilian barristers or solicitors to act as prosecutors in courts-martial. This provision will allow the Director greater flexibility in relation to the appointment of persons as prosecutors in court-martial cases.
- (vi) **Amendments to sections 177 and 177A of the Defence Act 1954 (Head 39):** This amendment relates to the investigation of disciplinary charges that may be brought against an officer of the Defence Forces. There are certain functions assigned to the Deputy Chief of Staff (Support) of the Defence Forces under this section. It is considered prudent to provide that the functions assigned to the Deputy Chief of Staff (Support) under this section should, if necessary, be exercised by an officer of an equal or higher rank (that is, either the Chief of Staff of the Defence Forces or the Deputy Chief of Staff (Operations) of the Defence Forces).

(viii) **Miscellaneous textual changes** There are also a number of miscellaneous technical changes to the Act. These type of changes are needed from time to time to keep the Defence Acts up to date.

(ix) **Amendment to section 2 of the Ombudsman (Defence Forces) Act 2004 (Head 41):** This amendment clarifies the persons who are eligible to be appointed as Ombudsman. The amendment is intended to underpin the independence of the Office of Ombudsman for the Defence Forces.

Conclusion

In conclusion, I would like to emphasise the importance of this Bill in advancing the implementation of the Independent Review Group's recommendation to establish a statutory External Oversight Body of the Defence Forces as a key component of the Tánaiste's strategy to achieve significant cultural change within the Defence Forces. While Members will notice that other legislative commitments as articulated in the Strategic Framework document are not included in this General Scheme, I think it is important to reiterate that this is the first of two substantial Defence Bills that will be progressed this year.

I would like to thank the Committee for their time and my colleagues and I welcome all questions you may have on the provisions of the General Scheme.

Thank you.