



Irish Congress of Trade Unions

Opening Statement to the Joint Committee on Foreign Affairs and Defence

Pre-legislative Scrutiny of the Heads of the Defence (Amendment) Bill 2023

20 February 2024

Chair, Deputies, Senators

1. On behalf of the Irish Congress of Trade Unions I would like to thank the Committee for the invitation to input in to your pre-legislative scrutiny of the heads of the Defence (Amendment) Bill 2023. I am accompanied by my colleague, Dr Laura Bambrick.
2. Congress is the representative body for 46 unions and seven associate members, and the largest civil society organisation on the island of Ireland. We represent the interests of some 800,000 workers in all sectors of the economy.
3. In the brief time I have available for my opening remarks, I will focus on our key observations of the draft Bill, which will amend the Defence Acts 1954 to 2015 to:
 - establish on a statutory basis an External Oversight Body for the Defence Forces;
 - provide a statutory basis for the Minister to authorise the military representative associations (PDFORRA and RACO) to associate with the Irish Congress of Trade Unions;
 - make a number of miscellaneous amendments.
4. Head 3 to 24 details the provisions relating to the establishment on a statutory basis of an External Oversight Body for the Defence Forces. The establishment of this Body was recommended by the Independent Review Group on Dignity and Equality Issues in the Defence Forces and it has operated on a non-statutory basis since 5 April 2023.
5. Head 8 details the provisions relating to the membership of the Oversight Body. Congress strongly recommends that this is amended to provide for a representative from PDFORRA and RACO in the membership of the Oversight Body.
6. Head 25 to 28 details the provisions providing a statutory basis for the Minister to authorise the military representative associations (PDFORRA and RACO) to associate with the Irish Congress of Trade Unions. While we welcome legislating to facilitate PDFORRA and RACO association with Congress on a longer-term basis, we have grave concerns with some of the conditions proposed.
7. Head 25(a) amends Section 2 of the Defence (Amendment) Act 1990 by the insertion of a new subsection. Under this, the Director of Military Prosecutions, a military judge or any other post specified by the Minister may be precluded from being a member of a military association.
8. Congress is deeply concerned that the Minister would seek through legislation to preclude employees from membership of a trade union or association and to proceed to legislate as proposed would have far reaching consequences. There is no requirement for such a provision.

9. The stated justification for Head 25(a) is that a holder of the specified posts is required to be independent in the performance of their functions and if they were a member of a military association that this would prejudice their independence. For example, a person who is the Director of Military Prosecutions and a member of RACO may be reluctant or unwilling to prosecute another member of RACO.
10. We reject this analysis. To claim that a holder of the specified posts would be deterred from fulfilling their duty by virtue of their membership of a military association is baseless. To restrict membership is disproportionate and potentially discriminatory.
11. What is more, Government is required by the end of this year to transpose into Irish law the EU Directive on Adequate Minimum Wages to improve living standards and working conditions. The directive now obliges the state to promote collective bargaining coverage. The directive is very clear that collective bargaining takes place between employers and trade unions. To preclude workers from being members of a trade union flies in the face of the requirements and aims of the directive.
12. In light of all of above, Congress is firmly of view that the provisions under Head 25(a) should be withdrawn.
13. Head 26 sets out a number of conditions that PDFORRA and RACO are required to observe if they are to be permitted longer-term association to Congress.
14. In May 2022 agreement was reached in the High Court, that allowed PDFORRA and RACO to associate with Congress on a temporary basis. Some conditions were attached to that settlement. However, it is our understanding that the conditions set out in Head 26 2(A) (a) – (j) go far beyond what was agreed in May 2022 and have been described by some as tantamount to a ‘gagging order’ that is hindering the military associations from representing their members. It is clear to us that a significant rewrite of Head 26 is required. Indeed, the explanatory notes readily acknowledge that this requires ‘further development and discussion.’
15. We are further concerned that Head 28 places unnecessary and disproportionate limits on individual members of the Defence Forces and like Head 26 requires further development and discussion.

Conclusion.

16. To conclude, Congress is recommending to the Committee that the Bill must:
 - provide for a representative of PDFORRA and RACO in the membership of the Oversight Body;
 - not exclude the holders of the specified posts, or any post, from being a member of the military associations;

- not obstruct PDFORRA and RACO from acting to represent their members effectively;
- not disproportionately limit the capacity of an individual member of the Defence Forces from participating in wider civil society.

I would like to thank you for your attention and we are happy to take any questions.

ENDS