



## **RACO 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 and Senators,**

**We thank you sincerely for the invitation to appear before you today and participate in this Pre-legislative Scrutiny process of the Heads of the Defence (Amendment) Bill 2023. I am accompanied by the RACO Deputy General Secretary Lt Col Derek Priestley.**

The provisions of Defence Force Regulation (DFR) S.6 (Third Schedule) provide, explicitly under Paras B (q) & (r)., for consultation with RACO on *the application to the PDF of legislation which affects matters coming within the scope of representation.*

The Department's actions in publishing the General Scheme of the Defence (Amendment) Bill 2023 without consultation with the Defence Forces representative associations leaves RACO with no choice other than to seek amendments to the Heads of Bill through the Pre-legislative Scrutiny process.

### **External Oversight Body**

Heads 3 to 24 relate to the statutory establishment of the Oversight Body for the Defence Forces. RACO welcomes the return of Independent Oversight to the organisation, which has been absent since the Independent Monitoring Group was unilaterally discontinued by the Department of Defence.

**Head 6 (1) & (2)** Provides that the new Oversight Body shall oversee, monitor and advise the Minister on the implementation by the Defence Forces of human resource management matters, including *inter alia* recruitment, training (other than military training exercises), education and performance management, and promotion of members of the Defence Forces. All of the included matters fall within the scope of Defence Forces representation under the Acts. For example, the promotion systems for Defence Forces personnel are negotiated between the representative associations, Department and Military Management and voted upon by association members.

We require clarity as to the powers comprehended by the actions to “oversee, monitor and advise”. The intent of the Oversight Body with regard to consultation and engagement with the association in these areas also remains unclear. We sincerely hope that the Oversight Body will assume the vital function of monitoring the staffing levels in operational and training units, a function that was formerly carried out by the Independent Monitoring Group.

**Head 8 (4)** prescribes the composition of the Body and includes the Secretary General of the Department of Defence, as an ex-officio member. The previous Oversight Body in the Defence Forces included both General Secretaries of the PDF Representative Associations as ex-officio members, along with a member of the Department of Defence and Military Management, under an independent Chair. It is unclear why this has not been replicated in the new Oversight Body, when one considers the continued presence of the Department on the Body. Our association seeks the continued membership, on an ex-officio basis, of the General Secretaries of the associations, to ensure member buy-in, and to provide much needed context and the benefit of the considerable experience and corporate knowledge of over thirty years of effective, constructive representation of Defence Forces personnel. The extremely limited engagement of the Oversight Body with our association to date (45 minutes in 9 months) is of significant concern to our members.

According to the accompanying Explanatory Note, the Head (based on one chairperson and six ordinary members), *“would need to be amended if, as allowed under its Terms of Reference, the interim External Oversight Body were to advise the Tánaiste of a need to expand its membership”*.

**Our Association strongly believes that the membership should be expanded to include the General Secretaries of both representative associations on an ex-officio basis.**

**Head 25(a)** provides for the insertion of a new subsection 2(2A) of the Defence (Amendment) Act 1990 to provide as follows:

*An officer holding any of the following positions shall not be a member of an association:*

- (a) Director of Military Prosecutions;*
- (b) military judge; or*
- (c) any post as may be prescribed by the Minister:*
  - (i) where the post holder is independent in the performance of his or her functions; and*
  - (ii) where the post holder shall neither report on, nor be the subject of any report in respect of, the performance of his or her functions under the Defence Act 1954.*

This is held by RACO to be unnecessary and discriminatory, a point that had been made in detail by RACO to the Department, and endorsed by the finding of the Government-appointed Adjudicator for the Conciliation and Arbitration Scheme which has been laid before the Oireachtas. The Adjudication finding has been provided to the Committee. The Department of Defence has appealed this finding, but rather than awaiting the outcome of the appeal which has yet to be heard, has moved to enshrine the prohibition in primary legislation, completely ignoring the finding. It should be noted that the Department has provided no evidence that membership of our association has or would ever negatively impact the independence of any appointment holder in the performance of their functions.

Further, in addition to the removal of rights of membership of a representative association from the appointment holders specified in (a) and (b), the contents of (c) (i) and (ii) are hugely broad and ill-defined, and provide scope for further members to have their rights, protections and benefits of membership of a representative association stripped away.

RACO strongly believes that Head 25(a) should be removed in its entirety, as it is unnecessary, disproportionate, and discriminatory, with no analogous example in the rest of Irish society.

## Head 26

The Explanatory Notes for this Head assert that it is based largely on the terms of the 2022 High Court settlement with the representative associations and requires further development and discussion. It further states that Draft prohibition (j) reflects the existing Defence Force Regulation S.6. This assertion is only *partially* true in the case of draft prohibition (j).

**Para 2A(j) of Head 26** states that a representative association or a representative of an association “Shall not make a public statement or comment concerning a political matter **or Shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy**”.

Defence Force Regulation S.6 does NOT include this additional restriction regarding commentary on Government policy. This language is taken directly from the restrictions contained within the Policing, Community and Safety Bill 2023 that are placed on the Garda Commissioner, Director of Community Safety, chief executive of the Policing Authority and Police Ombudsman when appearing before committees of the Oireachtas. No such restrictions regarding commentary on government policy are placed on Garda representative associations.

To impose such restrictions on Defence Forces representative associations or representatives of an association would have the effect of completely silencing and frustrating the ability of the associations to advocate for their members on matters that fall within the scope of representation under the Defence Forces Regulation S.6. The application of the line “*shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy*” is unnecessarily draconian, repressive and restrictive for a representative association, and should be removed, particularly when it is noted that the Department of Defence has advised this Committee and our association that it is not intended to remove or alter any of the rights or obligations that have applied to Defence Forces representation since 1990.

## Head 28 (1) (a), (b), (c), (d)

The inclusion of the additional language relating to Government policy would make it impossible for elected representatives of an association at an Annual Delegate Conference to advocate for improved terms and conditions of service.

1(d) would also prohibit representatives from participating in meetings of Congress, or other associations that seek to influence government policy, and it would also potentially make it unlawful for members of the Defence Forces to participate in a range of aspects of wider civil society. The reference to influencing government policy should therefore be removed.

In summary, our association thanks the committee for the opportunity to participate in this process. We respectfully seek amendments to facilitate ex-officio membership of the Oversight Body, to remove Head 25(a), and to amend Heads 26 and 28 to remove the unnecessarily restrictive references to Government policy. We are happy to take questions from the Committee members.

ENDS

## **Annex A: Proposed Amendments to Heads 8, 10, 25, 26 and 28 of Bill**

### **Head 8: Membership of the External Oversight Body**

Insert: (4) The External Oversight Body shall be comprised of—

*(f) the General Secretary of RACO who shall be an ex-officio member.*

*(g) the General Secretary of PDFORRA who shall be an ex-officio member.*

### **Head 10: Ineligibility for appointment, disqualification from External Oversight Body of member of External Oversight Body, committee of External Oversight Body, cessation of membership, etc.**

(1) A person shall not be eligible to be recommended for appointment or appointed as a member of the External Oversight Body or if he or she is—

(d) a member of the Defence Forces, *other than the General Secretary of RACO or PDFORRA.*

**Head 25 (a) should be deleted entirely.**

### **Head 26**

(2A) An association, or a representative of an association, shall not:

(j) make a public statement or comment concerning a political matter [**or** question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such policy].

**All text in the square bracket should be deleted (i.e., all text after ‘political matter’).**

**Head 28: All references to ‘government policy’ should be removed.**

1(a): remove ‘or a matter of government policy’.

1(b): remove (ii) ‘a matter of government policy’.

1(c): remove [or grouping seeking to influence government policy]

1(d): remove [or grouping seeking to influence government policy]