

DEFENCE (AMENDMENT) BILL 2018

General Scheme

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Head 1: Short title, collective citation and commencement

Provides that:

- (1) This Act may be cited as the Defence (Amendment) Act 2018.

- (2) The Defence Acts 1954 to 2015 and this Act may be cited as the Defence Acts 1954 to 2018.

- (3) This Act shall come into operation on such day or days as the Minister for Defence may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Head 2: Interpretation

Provides that:

In this Act “the Principal Act” means the Defence Act 1954.

Explanatory Notes

This Head provides that any reference to the Principal Act in the Bill refers to the Defence Act 1954.

Head 3: Insertion of new section (17A) into the Defence Act 1954

Provides:

For the insertion of a new section (section 17A) into the Defence Act 1954:

Operational Control

17A. (1) For the purposes of this section -

“Act of 2006” means the Defence (Amendment) Act 2006 (No. 20 of 2006),

“contingent” means a unit, units or personnel of the Permanent Defence Force despatched for service outside the State pursuant to the Defence (Amendment) (No. 2) Act 1960 as amended and extended by the Defence (Amendment) Act 2006,

“Force Commander” means the person commanding an international force,

“international force” means an International United Nations Force or any Force to which a contingent or a member of the Defence Forces may be assigned to for service outside the State for any purpose specified in section 3 of the Act of 2006,

“International United Nations Force” has the same meaning as in the Act of 2006, and

“operational control” means the authority delegated to a Force Commander in respect of a contingent assigned to him or her so that the Force Commander may accomplish certain missions or tasks which are usually limited by function, time or location, to deploy the contingent concerned, and to retain or assign tactical control of the contingent but does not include the authority to assign separate employment of any component of the contingent.

- (2) In accordance with this Act, the Minister may delegate operational control of a contingent or a member of the Defence Forces to a Force Commander.
- (3) The delegation of operational control by the Minister under subsection (2) may be subject to such exceptions and limitations as he or she may from time to time determine.
- (4) Any delegation of operational control by the Minister shall:
 - (a) where it relates to a delegation to a Force Commander, take the form of a written delegation issued in each case by the Minister to a Force Commander;

- (b) in so far as is necessary for 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, subject to any exclusion as may be specified in the written delegation, issued to him or her by a member of the international force in his or her military chain of command;
- (c) in so far as it is necessary for the efficient operation of a mission, 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;
- (d) provide that Irish troops shall cooperate with the military police component of the international force; and
- (e) include any other ancillary provisions as may be necessary for the operation of the mission to which the delegation refers.

Explanatory Note

This Head inserts a new section (s.17A) into the Defence Act 1954 to permit the delegation of operational control, a subsidiary element within military command, to a Force Commander commanding an international force. The provisions for the delegation of command and authority by the Minister currently in the 1954 Act, including the making of regulations applying to officers as to the persons to be invested, as officers, with military command, are unchanged.

In preparing this Head, the intention is to ensure that legislative provision is made to allow the Minister to delegate **operational control (OPCON)** of a contingent of the PDF or a member of the PDF to a Force Commander of an international force by means of written delegation issued by the Minister to the Force Commander.

Head 17A(1) provides a definition for ‘operational control’ and ‘Force Commander’. The definition for ‘operational control’ is based on the definition used in recent Ministerial directions issued to the Chief of Staff but with the caveat that a delegation of operational control does not include the power to assign separate employment to any component of the contingent that has been assigned to a Force Commander. The definition also clarifies that operational control is a subsidiary element within military command (i.e. not an equivalent power to military command).

The definition for ‘Force Commander’ clarifies that it relates to an officer commanding an international force.

The definition for “International United Nations Force” is the same as in the Defence (Amendment) Act 2006.

The definition for “international force” includes an International United Nations Force or any other Force to which a contingent or member of the PDF might be assigned to for the purposes specified in section 3 of the Act of 2006.

Head 17A(2), enables the Minister to, in accordance with the DF Act 1954, delegate operational control of a contingent of the Defence Forces to a Force Commander. Military command (which includes the absolute authority to deploy or withdraw personnel and contingents and to deal with matters of discipline and sanction) will continue to remain with the PDF through powers delegated by the Government through the Minister. This amendment is intended to provide a statutory basis for the delegation, subject to certain provisos, of day-to-day operational control (**OPCON**), to a Force Commander of an international force.

Head 17A(3) enables the Minister to attach limitations and exceptions in relation to the delegation of operational control.

Head 17A(4)(a) provides that the delegation of OPCON shall, in each case, [that is, a delegation in respect of a particular mission] will be by means of a written Ministerial delegation issued by the Minister to the Force Commander of the Irish troops.

Head 17A(4)(b) to 17A(4)(d) include general provision concerning the delegation of operational control by the Minister. The Ministerial delegation will be subject to any such exclusions as may be specified by the Minister. These exclusions will include the limitations as to the degree of control that may be exercised over Irish military personnel. In particular a delegation will provide that:

- (a) The lawful orders that an international Force Commander may issue to Irish troops are those necessary for the effective operation of a mission. The purpose of this provision is to allow for the effective functioning of an Irish contingent under the operational control of a Force Commander. Furthermore, the lawful orders that may be issued by a Force Commander or any superior officer of that Force will be subject to any exclusion as may be specified by the Minister in the written delegation (e.g. an exclusion may be on the grounds of safety) (**Head 17A(4)(b) refers**).
- (b) The international military police component attached to the international force may arrest and detain a member of the Defence Forces, provided that any such member is handed over to the Irish contingent commander as soon as possible. This provision is to assist in the efficient operation of any mission to which an Irish contingent is assigned and to deal with situations which may arise when the contingent commander is not readily available. However, this is a very limited power that is being delegated and the member that is arrested may only be held by the international military police component for as long as is necessary before the Irish contingent commander or the designated senior Irish officer takes responsibility for the member. (**Head 17A(4)(c) to (d) refers**).

Head 4 **Prohibition on enlistment of persons under the age of 18 years**

Provides:

(1) The Defence Act 1954 is amended as follows-

(a) Section 53 is amended:

(i) in subsection (1)(a) by deleting “(including a minor)”,

(ii) by repealing subsection (1)(b),

(b) Section 54 is amended by deleting “(including a minor)”,

(c) Section 55 is amended:

(i) by deleting “(including a minor)”, and

(ii) by repealing subsection (1)(b),

(d) Section 76 is repealed,

(e) Section 77 is repealed.

(2) Section (4)(c) of the Defence (Amendment) (No. 2) Act 1979 is amended by deleting “and references in sections 53 (1)(b) and 55 (1) (b) of that Act to a boy shall be construed as including references to a girl”.

Explanatory Note

The purpose of this group of amendments is to remove the references in the Defence Act to the enlistment of persons under the age of 18. Regulations made by the Minister under section 56 of the Defence Act specify the upper and lower age limits that apply to persons enlisting in the Defence Forces. The Regulations, inter alia, specify that the lower age limit for enlistment is 18.

The Head also provides for the repeal of section 76 (Discharge of persons under eighteen) and section 77 (Discharge of apprentices). 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.

Head 5: Amendment of Part IV to provide for the re-enlistment of former members of the Permanent Defence Force who previously served as enlisted persons

To provide for:

(1) The insertion of a new section (section 53A) as follows into the Defence Act 1954:

53A (1) A person who was formerly enlisted in the Permanent Defence Force and who has served the full term of his or her original enlistment in accordance with section 53 (and, if applicable, any periods of service authorised under section 64 and 65) may, subject to subsection (2), be re-enlisted as an enlisted person of the Permanent Defence Force for a specified period as determined by the Minister.

(2) A person may only be enlisted under subsection (1) where the Minister determines that this course of action will address a deficiency within the Defence Forces of necessary skills or expertise which cannot be met through the use of existing resources.

(3) Sections 53, 63, 64, 65 and 70 shall not apply to a person enlisted under this section.

(2) The amendment of section 56 to provide that section 56(1) (e) shall read as follows:

56(1) (e) the persons to be enlisted, including the specific provisions that shall apply to persons enlisted under section 53A.

(3) The amendment of section 58 to substitute ‘*section 53 or 53A*’ for ‘*section 53*’.

(4) The amendment of section 69 to substitute ‘*section 53 or 53A*’ for ‘*section 53*’.

Explanatory Note:

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

The purpose of this Head 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). The intention is that this provision will be used to enlist suitably-qualified former enlisted persons in the PDF to fill key specialised appointments. 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 56 of the Defence Act will be amended to provide that the Minister may include specific provisions relating to the enlistment of such persons in regulations made by him concerning the recruitment of enlisted persons.

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

Head 6: Amendment of Section 178E (3) (Appeal to summary court-martial)

To provide:

For the amendment of the appeal procedures provided for in section 178E(3)(b) so that an application for an appeal to the summary court-martial may be brought within such longer period as the summary court-martial may allow following consideration of an application made before the end of the initial period.

S.178E (3) is amended by substituting the following for subsection (3)(b):

(b) within such longer period as the summary court-martial may allow following an application made to the summary court-martial before the end of the initial period.

Explanatory Note:

Section 178E (3) currently states:

“An appeal under this section shall be brought –

(a) within seven days beginning with the date on which the punishment was awarded (‘the initial period’), or

(b) within such longer period as the summary court-martial may allow by leave given before the end of the initial period.”

The current arrangements as outlined in s. 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 s. 178E(3)(a)) and the military judge is unavailable at short notice to consider the request).

To rectify the situation, it is proposed to amend s. 178E(3)(b) 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 on which the punishment was awarded) is retained.

Head 7: Miscellaneous amendments to the Defence Act 1954

To provide for:

- (i) the amendment of section 74 to substitute ‘*European Parliament*’ for ‘*Assembly of the European Communities*’; and
- (ii) the repeal of section 318.

Explanatory Note:

The purpose of this Head is to make some minor amendments to the Act and to repeal redundant sections.