



Number 25 of 2024

Defence (Amendment) Act 2024



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ACTS REFERRED TO

Civil Service Regulation Act 1956 (No. 46)

Companies Act 2014 (No. 38)

Criminal Justice (Psychoactive Substances) Act 2010 (No. 22)

Defence (Amendment) Act 1990 (No. 6)

Defence (Amendment) Act 2006 (No. 20)

Defence Act 1954 (No. 18)

European Parliament Elections Act 1997 (No. 2)

Legal Services Regulation Act 2015 (No. 65)

Local Government Act 2001 (No. 37)

Misuse of Drugs Act 1977 (No. 12)

National Archives Act 1986 (No. 11)

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Number 25 of 2024

DEFENCE (AMENDMENT) ACT 2024

An Act to amend the Defence Act 1954; to provide for the establishment of a body to be known as Comhlacht Formhaoirsithe Seachtrach Óglaigh na hÉireann and to provide for its functions; to amend the National Archives Act 1986; to amend the Defence (Amendment) Act 1990; to amend the Ombudsman (Defence Forces) Act 2004; and to provide for related matters. [17th July, 2024]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Defence (Amendment) Act 2024.
(2) *Sections 5, 12, 13, 16, 19, 21, 22 and 23* shall come into operation on such day or days as the Minister 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.

Definitions

2. In this Act—
“Minister” means the Minister for Defence;
“Principal Act” means the Defence Act 1954.

Repeal

3. Section 38 of the Principal Act is repealed.

Expenses

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

AMENDMENT OF PRINCIPAL ACT

Amendment of section 2 of Principal Act

5. Section 2 of the Principal Act is amended by the insertion of the following definitions:

“ ‘court-martial prosecutor’ has the meaning assigned to it by section 184F;

‘External Oversight Body’ has the meaning assigned to it by section 321;”.

Amendment of section 48 of Principal Act

6. Section 48 of the Principal Act is amended by the substitution of the following subsection for subsection (6):

“(6) An officer shall relinquish his or her commission if he or she—

(a) is elected as a member of either House of the Oireachtas or the European Parliament,

(b) is nominated as a member of Seanad Éireann, or

(c) is regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament.”.

Amendment of section 53A of Principal Act

7. Section 53A of the Principal Act is amended, in subsection (3), by the insertion of “or terms” after “such further term”.

Amendment of section 64 of Principal Act

8. The Principal Act is amended by the substitution of the following section for section 64:

“64. (1) Subject to subsection (2) and any regulations that may be made under subsection (3), a member of the Permanent Defence Force enlisted under section 53 (in this section referred to as an ‘enlisted member’) may, after the expiration of 9 years, reckoned from the date of the enlisted member’s attestation, apply for and be re-engaged for a further period of service in the Permanent Defence Force which shall continue until the earlier of the following occurs:

(a) that enlisted member’s service makes up a total continuous period not exceeding 21 years’ service reckoned as aforesaid;

- (b) that enlisted member attains the upper age limit permitted for continuance in service as prescribed in regulations made by the Minister under this Act.
- (2) The re-engagement of an enlisted member under this section shall be subject to—
- (a) the recommendation of the enlisted member’s commanding officer that the enlisted member concerned is suitable for re-engagement, and
 - (b) the approval by the prescribed military authority of the enlisted member concerned for re-engagement.
- (3) The Minister may, in relation to an enlisted member who applies for re-engagement, make regulations prescribing the conditions that shall apply to the re-engagement of an enlisted member under this section including—
- (a) the standard of physical fitness to be attained,
 - (b) the minimum medical classification code to be held,
 - (c) the military courses of instruction to be completed,
 - (d) the period of service outside the State to be completed within a prescribed period, and
 - (e) the standard of conduct to be adhered to.
- (4) Regulations under this section may—
- (a) make different provision in relation to different classes of enlisted members, and
 - (b) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.”.

Amendment of section 67 of Principal Act

9. The Principal Act is amended by the substitution of the following section for section 67:

- “67. (1) Subject to subsection (2) and any regulations that may be made under subsection (3), a reservist may, after the expiration of 9 years, reckoned from the date of the reservist’s attestation, apply for and be re-engaged for a further period of service in the Reserve Defence Force which shall continue until the earlier of the following occurs:
- (a) the reservist’s service will make up a total continuous period not exceeding 21 years’ service reckoned as aforesaid;
 - (b) the reservist attains the upper age limit permitted for continuance in service as prescribed in regulations made by the Minister under this Act.

- (2) The re-engagement of a reservist under this section shall be subject to—
 - (a) the recommendation of the reservist’s commanding officer that the reservist concerned is suitable for re-engagement, and
 - (b) the approval by the prescribed military authority of the reservist concerned for re-engagement.
- (3) The Minister may, in relation to a reservist who applies for re-engagement, make regulations prescribing the conditions that shall apply to the re-engagement of a reservist under this section including—
 - (a) the standard of physical fitness to be attained,
 - (b) the minimum medical classification code to be held, and
 - (c) provision for such training as the Minister considers appropriate to be completed by a reservist who applies for re-engagement.
- (4) Regulations under this section may—
 - (a) make different provision in relation to different classes of reservists, and
 - (b) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.”.

Amendment of section 97 of Principal Act

10. Section 97 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) The Minister shall, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine the rates and scales of pay, allowances and gratuities of members of the Defence Forces which shall be published on a website maintained by or on behalf of the Minister.”,

- (b) by the insertion of the following subsection after subsection (1):

“(1A) The Minister may make regulations in relation to the following matters:

- (a) the conditions applicable to the issue of pay, allowances and gratuities of members of the Defence Forces;
- (b) the grants which may be made to members and units of the Defence Forces and the conditions applicable to the issue of such grants.”,

and

- (c) in subsection (4), by the substitution of “as determined by the Minister under subsection (1)” for “under regulations made under subsection (1) of this section”.

Amendment of section 103 of Principal Act

- 11.** Section 103 of the Principal Act is amended by the insertion of the following subsection after subsection (1):

“(1A) Without prejudice to the Defence (Amendment) Act 1990 and any regulations made thereunder, a member of the Permanent Defence Force shall not—

- (a) while in uniform or otherwise making himself or herself identifiable as a member of the Permanent Defence Force—
 - (i) make, without prior authorisation from the member’s commanding officer, a public statement or comment in relation to a political matter or matter of Government policy, or
 - (ii) attend a protest, march or other gathering in relation to a political matter or matter of Government policy,
- (b) canvass on behalf of, or collect contributions for, any political organisation or society, or
- (c) address a meeting of a political organisation or society.”.

Regulations relating to testing for controlled drugs and psychoactive substances

- 12.** The Principal Act is amended by the insertion of the following section after section 117:

“**117A.** (1) A member of the Defence Forces shall be subject to drug testing in accordance with regulations made under this section.

- (2) The Minister may in relation to members of the Defence Forces make regulations to provide for the establishment, maintenance and operation of a regime of testing for controlled drugs and psychoactive substances which may provide for—
 - (a) subject to paragraph (b), a prohibition on the presence of controlled drugs or psychoactive substances above a specified concentration in a sample,
 - (b) the procedure to be followed where a member of the Defence Forces is exposed to a controlled drug or psychoactive substance in the course of and as a result of his or her duties,
 - (c) the taking of samples,
 - (d) a prohibition on tampering with a sample,
 - (e) the persons who may be permitted to take a sample,

- (f) the information to be provided to a member of the Defence Forces required to provide a sample,
 - (g) matters with regard to the testing and analysis of samples,
 - (h) the reasons for testing, which may include—
 - (i) random testing, or
 - (ii) targeted drug testing,
 - (i) the concentration of a controlled drug or psychoactive substance required to be present to yield a positive result in a sample,
 - (j) how samples are to be stored,
 - (k) the period during which samples may be stored,
 - (l) the reviewing of test results,
 - (m) the consequences that may apply to a member of the Defence Forces who refuses or fails to provide a sample,
 - (n) the consequences that may apply to a member of the Defence Forces where a positive result is yielded in his or her sample, and
 - (o) such ancillary, incidental, consequential or supplemental provisions as he or she considers necessary or expedient for the purposes of establishing, maintaining and operating the regime of testing for controlled drugs and psychoactive substances.
- (3) Regulations under this section may prescribe differently for different circumstances or cases, classes or types.
- (4) In this section—
- ‘controlled drug’ has the same meaning as it has in section 2 of the Misuse of Drugs Act 1977;
- ‘psychoactive substance’ has the same meaning as it has in the Criminal Justice (Psychoactive Substances) Act 2010;
- ‘sample’ means a sample of any of the following taken, or to be taken, from a person:
- (a) urine;
 - (b) hair, other than pubic hair;
 - (c) oral fluid, including saliva;
 - (d) blood.”.

Amendment of section 161 of Principal Act

- 13.** Section 161 of the Principal Act is amended—

- (a) in subsection (2), in paragraph (ea), by the substitution of “court-martial prosecutor” for “prosecuting officer”, and
- (b) in subsection (3), by the substitution of “court-martial prosecutor” for “prosecuting officer”.

Amendment of section 177 of Principal Act

14. Section 177 of the Principal Act is amended—

- (a) in subsection (1), by the insertion of “subject to subsection (1A),” after “the person’s commanding officer or,” and
- (b) by the insertion of the following subsection after subsection (1):

“(1A) The Chief of Staff may, where the circumstances so require—

- (a) appoint an officer to investigate a charge for the purpose of subsection (1), or
- (b) direct the Deputy Chief of Staff (Operations) to appoint an officer for the said purpose.”.

Amendment of section 177A of Principal Act

15. Section 177A of the Principal Act is amended by the substitution of the following paragraph for paragraph (a):

“(a) to be investigated under section 177, or”.

Appointment of court-martial prosecutor

16. (1) The Principal Act is amended by the substitution of the following section for section 184F:

- “**184F.** (1) The Director may appoint in writing any of the following persons to be a prosecutor in a court-martial (in this Act referred to as a ‘court-martial prosecutor’):
- (a) a member of the Defence Forces who at the date of appointment under this subsection is a practising solicitor or practising barrister;
 - (b) a practising solicitor nominated by the Attorney General;
 - (c) a practising barrister nominated by the Attorney General.
- (2) A court-martial prosecutor shall hold and vacate office in accordance with such terms and conditions as may be determined by the Director.
- (3) A court-martial prosecutor may, unless the Director otherwise directs, exercise any function of the Director.
- (4) In this section—

‘practising barrister’ has the same meaning as it has in the Legal Services Regulation Act 2015;

‘practising solicitor’ has the same meaning as it has in the Legal Services Regulation Act 2015.”.

- (2) A person who, immediately before the coming into operation of *subsection (1)*, stood appointed to be a prosecuting officer under section 184F of the Principal Act shall, on and after such coming into operation, be deemed—
- (a) subject to *paragraph (b)*, to have been appointed as a court-martial prosecutor (within the meaning of that section as amended by *subsection (1)*) under that section as amended by *subsection (1)*, and
 - (b) to have been appointed on such terms and conditions as are not less favourable than the terms and conditions of service to which the person was subject immediately before such coming into operation.

Amendment of section 196 of Principal Act

17. Section 196 of the Principal Act is amended, in subsection (1), by the substitution of “The Director” for “The prosecutor”.

Amendment of section 248 of Principal Act

18. Section 248 of the Principal Act is amended, in paragraph (d), by the substitution of the following subparagraph for subparagraph (iiA):

“(iiA) having, or not having, at any specified time or times, served outside the State as a member of the Defence Forces with an International United Nations Force or for any purpose referred to in section 3 of the Defence (Amendment) Act 2006, or”.

Prohibition on use of term “Óglaigh na hÉireann”

19. The Principal Act is amended by the insertion of the following section after section 258:

- “258A. (1) A person who, in, or as part of, the name, title, description or styling of a body (whether incorporated or unincorporated), uses the term ‘Óglaigh na hÉireann’ commits an offence.
- (2) Subsection (1) shall not apply where use of the term ‘Óglaigh na hÉireann’ is authorised by law.
 - (3) A person who is guilty of an offence under this section shall be liable on summary conviction to a class D fine.
 - (4) Where an offence under this section is committed by a body corporate or by a person purporting to act on behalf of a body corporate or an unincorporated body of persons and is proved to have been committed with the consent, connivance or approval of, or to have been attributable to any wilful neglect on the part of, any person who, when

the offence was committed, was a director, a member of the committee of management or other controlling authority of the body concerned, or the manager, secretary or other officer of the body or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and be liable to be proceeded against and punished as if guilty of the first-mentioned offence.”.

Amendment of section 292 of Principal Act

20. Section 292 of the Principal Act is amended—

- (a) by the designation of that section as subsection (1),
- (b) in subsection (1) (as designated by *paragraph (a)*), by the substitution of the following paragraph for paragraph (i):

“(i) the conditions applicable to the issue of pay and allowances of members thereof, and the forfeitures and stoppages of, and the deductions from, such pay and allowances which may be made;”,

and

- (c) by the insertion of the following subsection after subsection (1):

“(2) The Minister shall, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine the rates and scales of pay and allowances of members of the Army Nursing Service which shall be published on a website maintained by or on behalf of the Minister.”.

External Oversight Body - insertion of Part XIII in Principal Act

21. The Principal Act is amended by the insertion of the following Part after Part XII:

“PART XIII

COMHLACHT FORMHAOIRSITHE SEACHTRACH ÓGLAIGH NA hÉIREANN

Interpretation (Part XIII)

319. In this Part—

‘committee’ means a committee of the External Oversight Body established under section 328;

‘establishment day’ means the day appointed under section 320;

‘financial year’, in relation to the External Oversight Body, means a period of 12 months ending on 31 December in any year and, in the case of the first financial year of the External Oversight Body, means the period commencing on the establishment day and ending on 31 December

in the year in which the establishment day falls.

Establishment day

320. The Minister shall by order appoint a day to be the establishment day for the purposes of this Part.

Comhlacht Formhaoirsithe Seachtrach Óglaigh na hÉireann

321. (1) There shall stand established on the establishment day a body to be known as Comhlacht Formhaoirsithe Seachtrach Óglaigh na hÉireann (in this Act referred to as the ‘External Oversight Body’) to perform the functions assigned to it by this Act or any other enactment.

(2) The External Oversight Body shall have all such powers as are necessary or expedient for the performance of its functions.

(3) The External Oversight Body shall be independent in the performance of its functions.

(4) The Thirteenth Schedule shall apply to the External Oversight Body.

Functions of External Oversight Body

322. (1) The External Oversight Body shall oversee and monitor the management of human resources of the Defence Forces by the Defence Forces and for those purposes—

(a) shall provide such advice to the Minister on matters arising as the External Oversight Body considers appropriate,

(b) shall, when requested by the Minister, or may, on its own initiative, conduct a review and make such recommendations to the Minister, for consideration, as it considers appropriate,

(c) shall furnish to the Minister, in such format as he or she may require, such information as the Minister may from time to time require, and

(d) shall keep the Minister informed of relevant matters.

(2) In this section, ‘management of human resources of the Defence Forces’ includes—

(a) the recruitment of members of the Defence Forces,

(b) the induction, training (other than military training exercises), education and performance management of members of the Defence Forces,

(c) the operation of a competition process for the promotion of members of the Defence Forces,

(d) the operation of a complaint or grievance process by or under section 114,

- (e) the preparation and issue of guidance documents by the Defence Forces relating to the management of human resources, and
- (f) any other matter that might reasonably be connected to the management of human resources of the Defence Forces.

Membership of External Oversight Body

- 323.** (1) The External Oversight Body shall consist of no fewer than 7 members and no greater than 9 members being—
- (a) a chairperson,
 - (b) no fewer than 5 and no greater than 7 ordinary members, and
 - (c) the Secretary General of the Department of Defence who shall be an *ex officio* member.
- (2) Subject to subsections (3) and (11), the members of the External Oversight Body referred to in paragraphs (a) and (b) of subsection (1) shall be appointed by the Minister.
- (3) Of the persons appointed under paragraphs (a) and (b) of subsection (1) to be members of the External Oversight Body—
- (a) at least 1 person shall, in the opinion of the Minister, have sufficient experience and expertise relating to the functions of the External Oversight Body,
 - (b) at least 1 person shall, in the opinion of the Minister, have sufficient experience and expertise relating to organisational governance, management or public administration,
 - (c) at least 1 person shall, in the opinion of the Minister, have sufficient experience and expertise relating to the financial matters including the allocation, management of and accountability for the effective use of financial resources, and
 - (d) at least 1 person shall, in the opinion of the Minister, have sufficient direct leadership experience of military transformation in another jurisdiction.
- (4) The Minister shall, in so far as is practicable, endeavour to ensure that among the members of the External Oversight Body there is an equitable balance between men and women.
- (5) Subject to subsections (6) and (7), the chairperson of the External Oversight Body shall be appointed by the Minister from among the members of the External Oversight Body.
- (6) The Minister may, before the establishment day of the External Oversight Body, designate a person to be appointed as the first chairperson of the External Oversight Body.

- (7) The person appointed (or designated under subsection (6)) as chairperson of the External Oversight Body shall not have served as a member of the Defence Forces or as a member of the defence forces of a state other than the State.
- (8) If, immediately before the establishment day, a person stands designated under subsection (6), the person shall, on that day, stand appointed as the first chairperson of the External Oversight Body.
- (9) The Minister may, before the establishment day, designate persons to be appointed as the first ordinary members of the External Oversight Body.
- (10) Where, immediately before the establishment day, a person stands designated under subsection (9), the person shall, on that day, stand appointed as an ordinary member of the External Oversight Body.
- (11) Subsections (2) and (3) shall not apply in respect of—
 - (a) the designation of a person as the first chairperson of the External Oversight Body under subsection (6), and
 - (b) the designation of persons as the first ordinary members of the External Oversight Body under subsection (9).
- (12) Subject to section 329(7), the External Oversight Body may act notwithstanding one or more than one vacancy in its membership.

Consultation in respect of certain appointments

- 324.** (1) The Minister may, prior to—
- (a) the commencement of a process for the selection of a person for appointment under section 12, or
 - (b) the holding of a competition in any other case, as the case may be, consult with the External Oversight Body regarding the selection criteria and recruitment process applicable in respect of—
 - (i) an appointment under section 12,
 - (ii) a promotion under section 45 to the rank of Brigadier-General,
 - (iii) an appointment of a civil servant (within the meaning of the Civil Service Regulation Act 1956) to work directly with the Defence Forces, or
 - (iv) the employment of a civilian under section 30(1)(g).
- (2) In subsection (1)—
- (a) a reference to a civil servant means a civil servant not below the rank of principal officer, and

- (b) a reference to a civilian means a civilian holding a position with a salary no lower than the first point of the salary scale of a person holding the rank of principal officer in the civil service.

Power of External Oversight Body to request information

325. (1) Where, in the opinion of the External Oversight Body, the Chief of Staff possesses information or possesses or controls a document or thing that is relevant to the performance by the External Oversight Body of its functions, the External Oversight Body may request in writing the Chief of Staff—

- (a) to give to the External Oversight Body such information, document or thing, and
 - (b) where appropriate, to attend a meeting with the External Oversight Body.
- (2) Where the External Oversight Body makes a request of the Chief of Staff under subsection (1), the Chief of Staff—
- (a) shall, subject to subsection (3), as soon as practicable comply with the request, and
 - (b) may, where he or she believes that it would be of assistance to the External Oversight Body, request that any of the following persons accompany him or her to attend the meeting with the External Oversight Body:
 - (i) an officer of the Permanent Defence Force not below the army rank of colonel or the equivalent naval rank;
 - (ii) a civil servant (within the meaning of the Civil Service Regulation Act 1956) not below the rank of principal officer who works directly with the Defence Forces.
 - (iii) a civilian employed under section 30(1)(g) holding a position with a salary no lower than the first point of the salary scale of a person holding the rank of principal officer in the civil service.
- (3) The Chief of Staff may, upon receipt of a request under subsection (1), withhold or redact any information, document or thing, where in the opinion of the Chief of Staff, the giving of such information, document or thing may affect adversely—
- (a) an ongoing investigation under Part V or an ongoing proceeding before a court-martial,
 - (b) the security of the State,
 - (c) the defence of the State,
 - (d) matters relating to Northern Ireland, or
 - (e) international relations of the State.

- (4) Where the Chief of Staff is of the opinion that subsection (3) applies in relation to a request made of him or her, the Chief of Staff shall so notify the External Oversight Body in writing.
- (5) The Chief of Staff shall, upon receipt of a request under subsection (1), redact all personal data (within the meaning of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016¹) to which that request relates from the information, document or thing concerned before giving that information, document or thing to the External Oversight Body.

Terms of appointment and conditions of office of members of External Oversight Body

- 326.** (1) Subject to subsection (2), a member, other than the *ex officio* member, of the External Oversight Body shall hold office, unless the member sooner dies, resigns, becomes disqualified or is removed from office, for such period, not exceeding 4 years from the date of his or her appointment, as the Minister shall determine.
- (2) Of the ordinary members of the External Oversight Body who are first appointed under this Act—
 - (a) 3 members shall hold office for a period of 4 years from the date of their respective appointments as such ordinary members, and
 - (b) the remaining members shall hold office for a period of 3 years from the date of their respective appointments as such ordinary members.
 - (3) Subject to subsection (4), a member of the External Oversight Body whose term of office expires by the effluxion of time shall be eligible for reappointment to the External Oversight Body.
 - (4) A person who is reappointed by the Minister to the External Oversight Body in accordance with subsection (3) shall not hold office for consecutive periods of more than 8 years.
 - (5) The chairperson and ordinary members of the External Oversight Body shall hold office on such terms and conditions (including terms and conditions relating to remuneration and allowances for expenses) as may be determined by the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, at the time of appointment or reappointment, and be paid out of moneys at the disposal of the External Oversight Body.
 - (6) A member of the External Oversight Body may resign from office by notice in writing addressed to the Minister and the resignation shall take effect on the date the Minister receives the notice, or, if a date is specified in the notice and the Minister agrees to that date, on that date.

¹ OJ No. L119, 4.5.2016, p. 1

Removal of member of External Oversight Body

- 327.** (1) The Minister may remove a member of the External Oversight Body from office where he or she is satisfied that one or more of the grounds specified in subsection (2) apply in respect of the member.
- (2) The following grounds are specified for the purposes of subsection (1):
- (a) the member has, without reasonable excuse, failed to discharge his or her functions;
 - (b) the member has become incapable through ill-health or otherwise of effectively performing his or her functions;
 - (c) the member has committed stated misbehaviour;
 - (d) the member has a conflict of interest of such significance that he or she should cease to hold office;
 - (e) the member is otherwise unfit to hold the office or unable to discharge his or her functions.
- (3) Where the Minister proposes to remove a member of the External Oversight Body pursuant to subsection (1), he or she shall notify, or cause to be notified, the member concerned in writing of the proposal.
- (4) A notification under subsection (3) shall include—
- (a) a statement of the reasons for the proposal,
 - (b) a statement that the member of the External Oversight Body concerned may, within 30 working days of the sending of the notification or such longer period as the Minister may specify, make representations in such manner as may be specified in the notification to the Minister as to why he or she should not be removed from office, and
 - (c) a statement that, where no representations are received within the period specified under paragraph (b), the Minister may, without further notice, proceed with the removal of the member of the External Oversight Body from office in accordance with this section.
- (5) The Minister shall, in considering whether to remove a member of the External Oversight Body from office in accordance with this section, take into account—
- (a) any representations made in accordance with subsection (4)(b), and
 - (b) any other matters that the Minister considers relevant for the purposes of the decision.
- (6) Where, having taken into account the representations (if any) and matters referred to in subsection (5), the Minister decides to remove

the member of the External Oversight Body from office, he or she shall notify that member in writing of the decision and of the reasons for it.

Committees of External Oversight Body

- 328.** (1) The External Oversight Body may establish such and so many committees as it thinks fit to assist and advise it in relation to the performance of any or all of its functions under this Act or any other enactment.
- (2) A committee—
- (a) shall consist of such number of members of the External Oversight Body as the External Oversight Body may determine,
 - (b) may include any number of civil servants (within the meaning of the Civil Service Regulation Act 1956) assigned to the External Oversight Body under section 330 as the External Oversight Body may determine, and
 - (c) may, subject to paragraphs 7 and 8 of the Thirteenth Schedule, include persons who are not members of the External Oversight Body.
- (3) In appointing the members of a committee, the External Oversight Body shall have regard to—
- (a) the range of qualifications and experience necessary for the proper and effective performance of the functions of the committee, and
 - (b) the desirability of there being an equitable balance between men and women on the committee.
- (4) The chairperson of a committee shall be appointed by the External Oversight Body from among the members of the committee.
- (5) A member of a committee may be removed from office at any time by the External Oversight Body for stated reasons.
- (6) The External Oversight Body may determine the terms of reference and regulate the procedure of a committee.
- (7) The acts of a committee shall be subject to confirmation by the External Oversight Body unless the External Oversight Body otherwise determines.
- (8) A committee shall provide the External Oversight Body with such information as the External Oversight Body may from time to time require, in respect of the committee's activities and operations, for the purposes of the performance by the External Oversight Body of its functions.
- (9) The External Oversight Body may at any time dissolve a committee.

- (10) A committee may act notwithstanding one or more than one vacancy in its membership.

Meetings and business of External Oversight Body

- 329.** (1) The External Oversight Body shall hold such and so many meetings, which shall be no less than 6 meetings in every 12 month period, as may be necessary for the performance of its functions.
- (2) The chairperson of the External Oversight Body shall fix the date, time and place of the first meeting of the External Oversight Body which shall be a date no later than the end of the period of 3 months beginning on the establishment day.
- (3) The chairperson of the External Oversight Body may call a meeting of the External Oversight Body to be held at any reasonable time.
- (4) Any 4 members of the External Oversight Body may call a meeting of the External Oversight Body where the chairperson—
- (a) refuses to call a meeting after being presented with a request for that purpose signed by not fewer than 4 members of the External Oversight Body, or
- (b) without refusing to call a meeting, does not call one within 7 days after being presented with a request under paragraph (a).
- (5) The members present at a meeting called under subsection (4) shall choose one of their number to chair the meeting.
- (6) At a meeting of the External Oversight Body—
- (a) the chairperson of the External Oversight Body shall, where present, chair the meeting, or
- (b) where and so long as the chairperson of the External Oversight Body is not present or where that office is vacant, the other members of the External Oversight Body who are present shall choose one of their number to chair the meeting.
- (7) The quorum for a meeting of the External Oversight Body shall—
- (a) where subsection (4) applies, be 3 members and the member chosen under subsection (5) to chair the meeting,
- (b) where paragraph (b) of subsection (6) applies, be 3 members and the member chosen under the said paragraph (b) to chair the meeting, and
- (c) in any other case, be 4 members and the chairperson of the External Oversight Body.
- (8) Each member of the External Oversight Body present at a meeting of the External Oversight Body shall have a vote.

- (9) Every question at a meeting of the External Oversight Body on which a vote is required shall be determined by a majority of the votes of the members of the External Oversight Body present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.
- (10) In addition to a meeting with all participants physically present, the External Oversight Body may hold or continue a meeting by the use of any means of communication by which all the participants can hear and be heard at the same time (in this section referred to as a ‘remote meeting’).
- (11) A member of the External Oversight Body who participates in a remote meeting is taken for all purposes to have been present at the meeting.
- (12) Subject to this Part, the External Oversight Body may determine its own procedures.

Staff and premises of External Oversight Body

- 330.** (1) The Minister shall assign to the External Oversight Body such and so many staff as he or she considers appropriate for the discharge by the External Oversight Body of its functions.
- (2) A member of staff assigned to the External Oversight Body shall be a civil servant (within the meaning of the Civil Service Regulation Act 1956).
 - (3) The Minister shall, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, provide the External Oversight Body with appropriate premises in which to perform its functions.

Power of External Oversight Body to enter into contracts and engage consultants and advisers

- 331.** (1) The External Oversight Body, with the consent of the Minister and the Minister for Public Expenditure, National Development Plan Delivery and Reform, may—
- (a) engage such consultants or advisers as the External Oversight Body considers necessary to assist in the performance of its functions, and
 - (b) enter into a contract with any person or body concerning any matter arising in relation to its functions.
- (2) There shall be paid out of the resources at the disposal of the External Oversight Body, to consultants, advisers, persons or bodies referred to in subsection (1), such fees (if any) or allowances for expenses (if any) incurred by the consultant, adviser, person or body, as the case may be, as the External Oversight Body, with the consent of the Minister and

the Minister for Public Expenditure, National Development Plan Delivery and Reform, may determine.

- (3) The engagement of a consultant or adviser under paragraph (a) of subsection (1) and a contract under paragraph (b) of that subsection shall be for such period and on such terms and conditions as the External Oversight Body may determine.

Strategy statement for External Oversight Body

332. (1) The External Oversight Body shall—

- (a) as soon as practicable after the establishment day prepare and submit to the Minister a strategy statement in respect of the period of 3 years immediately following the year in which the strategy statement is so submitted, and
 - (b) during the period of 6 months before the expiry of the period of 3 years to which the statement of strategy for the time being in effect applies, prepare and submit to the Minister a statement of strategy in respect of the period of 3 years immediately following the year in which the first-mentioned statement of strategy expires.
- (2) A strategy statement under this section shall include—
- (a) the key objectives, outputs and related strategies, including the use of resources, of the External Oversight Body in relation to the period to which the statement relates, and
 - (b) except in the case of the strategy statement first prepared under this section, a review and an evaluation of the work of the External Oversight Body in the performance of its functions in the previous 3 years.
- (3) In preparing a strategy statement under this section, the External Oversight Body shall have regard to—
- (a) the need to ensure the most beneficial, effective and efficient use of the resources available to it, and
 - (b) the policies of the Government or any Minister of the Government to the extent that those policies may affect or relate to the functions of the External Oversight Body.
- (4) The External Oversight Body shall, before submitting a strategy statement to the Minister under subsection (1)—
- (a) publish, in such manner as the External Oversight Body considers appropriate, a draft of the strategy statement,
 - (b) allow persons 30 days from the date of publication under paragraph (a) within which to make representations in writing to the External Oversight Body with regard to the draft of the strategy statement, and

- (c) having considered the representations (if any) made pursuant to paragraph (b), submit the strategy statement to the Minister with or without modifications.
- (5) The Minister shall cause a strategy statement received by him or her under subsection (1) to be laid before each House of the Oireachtas as soon as practicable after it is received.
- (6) The External Oversight Body shall ensure that, as soon as practicable after the strategy statement is laid before each House of the Oireachtas, the strategy statement is published on a website maintained by or on behalf of the External Oversight Body or in such other manner as the External Oversight Body considers appropriate.

Annual report of External Oversight Body

- 333.** (1) The External Oversight Body shall, not later than 3 months after the end of each year, prepare and submit to the Minister a report on its activities during the preceding year.
- (2) If, under subsection (1), the first annual report would relate to a period of less than 6 months, that report shall, notwithstanding that subsection, instead relate to the performance of the functions of the External Oversight Body during that period and the year immediately following that period and the External Oversight Body shall prepare, and submit to the Minister, that first annual report as soon as may be, but not later than 3 months, after the end of that year.
 - (3) A report referred to in subsection (1) shall include a statement of the arrangements of the External Oversight Body for operating according to standards of good governance.
 - (4) The Minister shall cause a copy of a report referred to in subsection (1) to be laid before each House of the Oireachtas as soon as practicable after he or she receives the report.
 - (5) The External Oversight Body shall ensure that, as soon as practicable after a copy of a report under this section is laid before each House of the Oireachtas, the report is published on a website maintained by or on behalf of the External Oversight Body or in such other manner as the External Oversight Body considers appropriate.

Grants paid by Minister to External Oversight Body

- 334.** In each financial year, the Minister may, after consultation with the External Oversight Body, advance to the External Oversight Body out of moneys provided by the Oireachtas such sums as appear to the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, to be reasonably sufficient for the purposes of expenditure by the External Oversight Body in the performance of its functions.

Accounts of External Oversight Body

- 335.** (1) The External Oversight Body shall keep, or cause to be kept, in such form as may be approved by the Minister, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as may be approved by the Minister all such special accounts (if any) as the Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, from time to time direct.
- (2) Accounts kept in accordance with subsection (1) shall be submitted, not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister, after consultation with the Minister for Public Expenditure, National Development Plan Delivery and Reform, may direct, to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall, as soon as may be after they are so presented, cause copies thereof to be laid before each House of the Oireachtas.”.

External Oversight Body - insertion of Thirteenth Schedule to Principal Act

- 22.** The Principal Act is amended by the insertion of the following Schedule after the Twelfth Schedule:

“THIRTEENTH SCHEDULE
EXTERNAL OVERSIGHT BODY

Section 321(4)

1. The External Oversight Body shall be a body corporate with perpetual succession and a seal and power to sue, and may be sued, in its corporate name and shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure, National Development Plan Delivery and Reform have the power to acquire, hold and dispose of land or an interest in land, and shall have the power to acquire, hold and dispose of any other property.
2. The seal of the External Oversight Body shall be authenticated by the signatures of—
 - (a) a member of the External Oversight Body, and
 - (b) a member of staff of the External Oversight Body authorised in writing by the External Oversight Body to act in that behalf.
3. Judicial notice shall be taken of the seal of the External Oversight

Body and any document purporting to be an instrument made by and to be sealed with the seal of the External Oversight Body (purporting to be authenticated in accordance with paragraph 2) and shall, unless the contrary is proved, be received in evidence and be deemed to be such instrument without further proof.

4. Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal, may be entered into or executed on behalf of the External Oversight Body by any person generally or specially authorised by the External Oversight Body to act in that behalf.
5. A person shall not be eligible to be recommended for appointment or appointed as a member of the External Oversight Body if he or she—
 - (a) is a member of either House of the Oireachtas,
 - (b) is entitled under the rules of procedure of the European Parliament to sit in that Parliament,
 - (c) is a member of a local authority,
 - (d) is a member of the Defence Forces,
 - (e) is a former member of the Defence Forces who served as a member during the period of 5 years immediately prior to a recommendation or an appointment,
 - (f) is a civil servant (within the meaning of the Civil Service Regulation Act 1956) serving in the Department of Defence, other than the Secretary General, or
 - (g) is a civil servant (within the meaning of the Civil Service Regulation Act 1956), or former civil servant, who served with the Department of Defence during the period of 5 years immediately prior to a recommendation or appointment.
6. Where a member of the External Oversight Body is—
 - (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament, or
 - (d) becomes a member of a local authority,he or she shall thereupon cease to be a member of the External Oversight Body and, where applicable, a member of a committee of the External Oversight Body.
7. A member of the External Oversight Body or a member of a committee

of the External Oversight Body shall be ineligible to be a member, and cease to be a member, where he or she—

- (a) subject to paragraph 8, is adjudicated bankrupt,
 - (b) makes a composition or arrangement with his or her creditors,
 - (c) is convicted of an indictable offence, or is convicted outside the State for an offence consisting of acts or omissions that, if done or made in the State, would constitute an offence triable on indictment,
 - (d) is convicted of an offence involving fraud or dishonesty,
 - (e) is convicted by a court-martial of an offence against military law for which he or she is sentenced to imprisonment to a term of not less than 12 months in respect of that offence,
 - (f) is sentenced by a court of competent jurisdiction to a term of imprisonment,
 - (g) has a declaration under section 819 of the Companies Act 2014 made against him or her, or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
 - (h) is subject, or is deemed to be subject, to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act.
8. A person shall be ineligible under subparagraph (a) of paragraph 7 for appointment as a member of the External Oversight Body or a member of a committee of the External Oversight Body only for so long as he or she has not obtained a certificate of discharge from the bankruptcy or the bankruptcy has not been annulled.
9. Where a member of the External Oversight Body does not, for a consecutive period of 6 months, attend a meeting of the External Oversight Body, he or she shall, at the end of that period cease to be a member of the External Oversight Body unless the member demonstrates to the Minister's satisfaction that the failure to attend was due to ill-health.
10. In this Schedule, 'local authority' means a local authority within the meaning of section 2 of the Local Government Act 2001.”.

PART 3

AMENDMENT OF OTHER ENACTMENTS

Amendment of Schedule to National Archives Act 1986

23. The Schedule to the National Archives Act 1986 is amended by the insertion of “Comhlacht Formhaoirsithe Seachtrach Óglaigh na hÉireann”.

Amendment of Defence (Amendment) Act 1990

24. The Defence (Amendment) Act 1990 is amended—

(a) in section 2—

(i) in subsection (1) by the insertion of “section 2A and” after “Subject to”,

(ii) by the substitution of the following subsection for subsection (3):

“(3) An association shall be independent of, and not associated with, any trade union or any other body outside of the Defence Forces.”,

and

(iii) by the insertion of the following subsections after subsection (3):

“(3A) The Minister may, notwithstanding subsection (3), authorise in writing an association to be associated with a trade union or any other body outside of the Defence Forces in such cases and in such manner and subject to such conditions or restrictions as he or she may specify.

(3B) The Minister may, subject to subsection (3C), by notice in writing vary or withdraw an authorisation under subsection (3A).

(3C) Where the Minister intends under subsection (3B) to vary or withdraw an authorisation, he or she shall give the association notice in writing of the proposed decision, stating the reasons.

(3D) A notice given under subsection (3C) shall state that, not later than 7 days (or such other period as may be specified by the Minister) from the date of the notice, the association may make representations in writing to the Minister in relation to the proposed decision to vary or withdraw the authorisation.

(3E) Where a notice has been given under subsection (3C), the Minister shall not make a decision whether to vary or withdraw an authorisation until—

(a) he or she has considered the representations, if any, made by the association in accordance with the notice, or

(b) the period referred to in subsection (3D) has elapsed and no representations are made by the association.

(3F) Where the Minister, having considered the representations, if any, made in accordance with the notice given under subsection (3C), decides to vary or withdraw an authorisation, the Minister shall give the association notice in writing of the decision and the reasons for the decision.”,

(b) by the insertion of the following section after section 2:

“Prohibited activities of association

2A. (1) An association shall not—

- (a) call for or support industrial action in the Defence Forces or in any other body or other sector,
 - (b) encourage members to go on strike or engage in any strike action or any form of trade dispute or industrial action,
 - (c) encourage, directly or indirectly, members to go on strike, or engage in strike action or any other trade dispute or any industrial action by another organisation, trade union or person,
 - (d) encourage members to refuse to follow a lawful order to pass a picket line,
 - (e) encourage members to contravene their obligations under military law,
 - (f) endorse or support any official position taken, endorsed or supported by the Irish Congress of Trade Unions or other organisation, in support of any industrial action taken by any party, and
 - (g) without prejudice to the purpose of an association of representing members—
 - (i) make a public statement or comment concerning a political matter or matter of Government policy, or
 - (ii) encourage members to engage in public agitation, protest, lobbying or media commentary (including commentary by means of social media) concerning a political matter or matter of Government policy.
- (2) Without prejudice to subsection (1), the Minister may, where he or she determines that an activity represents a risk to the security of the State, notify in writing an association or a representative of an association that it is prohibited from engaging in the activity whether or not that activity is specified in subsection (1) and direct it to refrain from or cease to engage in that activity.
- (3) In subsection (1) ‘encourage’ includes request or otherwise support.”,

and

- (c) in section 5 by the substitution of “in accordance with section 3 of the Defence (Amendment) Act 2006” for “otherwise”.

Amendment of section 2 of Ombudsman (Defence Forces) Act 2004

- 25.** Section 2 of the Ombudsman (Defence Forces) Act 2004 is amended by the insertion of the following subsection after subsection (9):

“(10) A person is not eligible to be appointed under subsection (2) if he or she is or has been at any time during the period of 5 years immediately prior to the closing date to apply under a competition to be the Ombudsman—

- (a) a member of the Defence Forces,
- (b) a civil servant (within the meaning of the Civil Service Regulation Act 1956) in the Department of Defence, or
- (c) a civilian employed by the Minister under section 30(1)(g) of the Act of 1954.”.