



Mr Paul Stephens
Joint Committee on Foreign Affairs and Defence
Leinster House
Dublin 2
D02 XR20

By email to jcfad@oireachtas.ie

8 March 2024

Re: Submission on the General Scheme of the Defence (Amendment) Bill 2023

Dear Mr Stephens,

I am writing in response to your invitation to make a written submission on the General Scheme of the [Defence \(Amendment\) Bill 2023](#) (the **Bill**).

The Law Society of Ireland (the **Law Society**) supports the Joint Committee's work in this area and welcomes the opportunity to contribute.

Background

The contents of Head 26, which this submission exclusively deals with, are largely based on the terms of a Department of Defence High Court settlement in 2022¹ with Defence Force representative associations allowing them to temporarily associate with the Irish Congress of Trade Unions (**ICTU**). As part of this settlement, the Minister for Defence was required to introduce legislation that would change this temporary arrangement into a permanent one that had a concrete legislative basis.

Accordingly, one of the main purposes of the Bill is to provide a statutory footing permitting the Minister for Defence to authorise Defence Force representative associations to permanently associate with the ICTU.

Summary

The Law Society supports the right of members in the Defence Forces to be allowed to join the ICTU and is broadly in favour of the general terms of the High Court settlement as now reflected in the Bill. However, the Law Society has some observations regarding the limitations outlined in Head 26 and is concerned that these limitations on both trade union activities and freedom of expression/assembly are disproportionate in nature and

¹ 'Settlement allows soldiers join trade union body ahead of pay talks' (The Irish Times, 24 May 2022) available at: <https://www.irishtimes.com/news/crime-and-law/courts/high-court/settlement-allows-soldiers-join-trade-union-body-ahead-of-pay-talks-1.4887212>.

excessively limit the rights of Defence Force representative association members as enumerated in both the Constitution and Articles 5 and G of the European Social Charter.

Head 26: To “Insert a new section (2A) into the Defence (Amendment) Act 1990 to specify activities that an association will be prohibited from undertaking”.

Trade union membership

Head 26 sets out a number of conditions that the Permanent Defence Forces Representative Association (**PDFORRA**) and the Representative Association of Commissioned Officers (**RACO**) are required to observe if they are to be permitted to associate with the ICTU.

Head 26 contains restrictions on trade union-related activities such as the ability to call for industrial action, the encouragement of members to go on strike, and the endorsement of official ICTU positions. In principle, the Law Society agrees that imposing conditions to PDFORRA and RACO ICTU membership is crucial for continued national security and for public safety.

Although the requirements of national security, public safety and military force-readiness dictate that there should be reasonable restrictions on the trade union activities of Defence Force personnel under Articles 5 and G of the [European Social Charter](#), the Law Society is concerned that Head 26’s restrictions on trade union activities overall constitute a disproportionate limitation of Defence Force personnel’s right to organise under a trade union and should accordingly be amended.

Freedom of expression and assembly

[Defence Force Regulations S.6](#) are the Statutory Instrument that gives effect to the [Defence Amendment Act 1990](#) and governs, inter alia, the establishment, funding and operation of representative associations in the Permanent Defence Force.

The Defence Force Regulations S6 do not include the additional proposed restriction in Head 26 regarding commentary on Government policy. This is taken directly from the restrictions contained within the [Policing, Community and Safety Act 2024](#) that are placed on the Garda Commissioner, the Director of Community Safety, the Chief Executive of the Policing Authority and the Police Ombudsman when appearing before committees of the Oireachtas.

No such restrictions regarding commentary on Government policy are placed on Garda representative associations. The Law Society submits that members of Defence Force representative associations should enjoy the same rights to free expression and assembly as their equivalents in Garda representative associations given the importance of both fields to the continued maintenance of both national and public security.

To impose such restrictions on members of Defence Forces representative associations may have the effect of silencing and frustrating the ability of the associations to advocate for their members on matters that fall within the scope of representation under the existing Defence Forces regulation.

The application of the following 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 too restrictive for a representative association and it is submitted that it should be

removed.

Article 40.6.1 of the Constitution provides for the right to assemble or meet peacefully. While constitutional rights are not absolute any restriction must be narrowly confined and necessary to achieve a specific aim. The Law Society submits that Head 26 is overly broad and could therefore undermine the purpose of these representative associations as independent forums intended to reflect the views and concerns of their members.

Conclusion

I hope that these observations will assist in your consideration of the Bill, and we would welcome the opportunity to engage further if that would be helpful.

Yours sincerely,

A handwritten signature in blue ink that reads "Mark Garrett". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Mark Garrett
Director General