



**05 Mar 2024**

**Cathaoirleach, Teachtaí Dála, agus Seanadóirí**

**An Comhchoiste um Ghnóthaí Eachtracha agus Cosaint**

**SUBMISSION TO**  
**THE JOINT COMMITTEE ON FOREIGN AFFAIRS AND DEFENCE**  
**ON THE GENERAL SCHEME OF THE DEFENCE (AMENDMENT) BILL 2023**

**Introduction.**

1. The Association of Retired Commissioned Officers (ARCO) fully appreciates the invitation from the Joint Committee on Foreign Affairs and Defence to make a written submission, and to contribute to the Pre-legislative Scrutiny process on the General Scheme of the Defence (Amendment) Bill 2023.
2. ARCO welcomes the intention of amending the Defence Acts 1954 – 2020 providing, inter alia, for the establishment of the External Oversight Body of the Defence Forces; providing authorisation for the Defence Forces Representative Associations to associate with the ICTU; and making a number of miscellaneous amendments, including protecting the prescribed Irish title of Defence Forces - “Óglaigh na hÉireann”.
3. On the matters leading and related to the drafting of the Defence (Amendment) Bill 2023, ARCO had been invited to make submissions and attend consultations with;
  - a. The Commission on the Defence Forces (CODF),
  - b. The Independent Review Group - Defence Forces (IRG-DF),
  - c. The Minister for Defence in relation to the drafting of the Terms of Reference for the forthcoming Tribunal of Inquiry ensuing from the IRG-DF Report.

**New Part X111 of the Defence Act 1954.**

4. The provisions relating to the External Oversight Body of the Defence Forces will be incorporated in the Defence Act 1954 as a new Part XIII as Part 2 and will consist of Heads 3 to 24. ARCO is particularly concerned with certain elements of Heads 6 and 8, which have the potential to adversely affect the authority of the Chief of Staff, and the



effectiveness and efficiency of the Defence Forces. Accordingly, these two proposed Heads of the Defence (Amendment) Bill 2023, are the primary focus of this submission.

### **Amendments to Section 2 Defence (Amendment) Act 1990**

5. The implications arising from Part 3 are also material, and ARCO can comment on these if required. ARCO notes that these provisions have been comprehensively addressed by the Defence Forces Representative Associations, ICTU and EUROMIL in their witness testimony to you on 20 Feb 2024.
  - a. Head 25 (prohibition on membership of a Representative Association),
  - b. Head 26 (prohibitions on activities by Representative Associations) and
  - c. Head 28 (prohibitions on activities of a public or political nature).

### **General Comments**

6. ARCO wishes to express its deep concern in respect of the dangerous effects that the Defence (Amendment) Bill 2023 will have on the State's proper and appropriate exercise of Civil control over its armed forces and in maximising its military capabilities and professionalism. ARCO humbly suggests that this Committee frame its pre-legislative scrutiny process around the following well founded internationally accepted benchmarks.
  - a. Civil control of armed forces refers to the proper subordination of a professional military to the ends of policy as determined by civilian authority, namely the democratically elected Government.
  - b. It falls to the military leadership to maximise military capability, on land, sea and in the air, within the restrictions and constraints demanded by Government.
  - c. A military capability is the fusion of a spectrum of components under the command, leadership, and management of the legally appointed commander. Within this spectrum are the areas of human resource management, education, and training, logistics, equipment, organisation, etc.
  - d. Proper oversight of the Defence Forces must ensure that military policies and capabilities are aligned with political objectives and resources made available.
  - e. Control and oversight of a state's military can be exercised objectively or subjectively. On the one hand an objective approach maximises military



professionalism and political neutrality whilst a subjective approach undermines professionalism and risks politicisation in seeking political influence.

7. In ARCO's view, the Defence (Amendment) Bill 2023, as set out in part, lacks objectivity, and prescribes subjectively with provisions in the crucial area of human resource management. This diminishes the military leadership in maximising capabilities.
8. Similarly, as the testimony provided by the Defence Forces Representative Associations, ICTU and EUROMIL on 20 Feb 2024, expressing concern over the prohibitions on membership and activities, as part of representation, may render representation for military personnel defunct and have wider industrial relations implications for many other sectors.
9. The exclusion of the Representative Associations and apparently, the leadership of the Defence Forces from the elaboration process of drafting the provisions of the Defence (Amendment) Bill 2023, of which they have direct responsibilities and functions should of itself be a cause of considerable concern to the Joint Committee.
10. ARCO is concerned with Heads 6 and 8 in particular. These two Heads provide for the functions of the External Oversight Body (Head 6) and its membership (Head 8). Both provisions mark one of the most profound policy and policy effect changes since the foundation of the State.

## **Head 6: Functions and Powers of External Oversight Body**

11. **ARCO Position on External Oversight.** ARCO has consistently stated that it welcomes the concept of an Oversight Body. The previous iteration of the External Oversight Body, namely the Independent Monitoring Group (IMG), adopted a collaborative endeavour involving a senior Defence Forces officer, a senior official of the Department of Defence, and the Defence Forces Representative Associations, with an independent Chair. Within the successful and much respected IMG, no one element held dominance over proceedings, deliberations, or outputs. The disbandment of the IMG was a serious policy error.
12. In comparison with the IMG, ARCO notes the complete removal from the External Oversight Body of professional military knowledge and expertise as well as stakeholder voices through the Representative Associations.
13. ARCO notes that Head 6 of the Defence (Amendment) Bill 2023, providing for the establishment of an External Oversight Body, has relied on the Policing, Security and Community Safety Act 2024. Chapter 2 provides for the establishment of a Board of An



Garda Síochána (para 11) and the functions of this Board [para 12 (1) to (4)]. There is a broad similarity between these entities in respect of providing for external oversight. Link to Policing, Security and Community Safety Act 2024:

<https://www.irishstatutebook.ie/eli/2024/act/1/enacted/en/index.html>

14. It is instructive to compare the functions assigned to both bodies and the difference in intent.
  - a. Head 6 (1), of the Defence (Amendment) Bill 2023, whilst recognising the provisions of Section 13 of the Defence Act 1954 which refers to the functions assigned to the Chief of Staff, provides that the External Oversight Body shall oversee, monitor, and advise the Minister on the implementation by the Defence Forces of human resource matters. Subsection (2) lists those matters. These are included in the prescribed functions assigned by the Minister for Defence to the Chief of Staff and the Deputy Chiefs of Staff, Operations and Support,
    - 1) Recruitment, induction, training, other than military training exercises – whatever that means - education and performance management including equality matters.
    - 2) Selection criteria for promotion.
  - b. By comparison Chapter 2 Head 12 (1) (a), (b), (c), (d), of the Policing, Security and Community Safety Act 2024 assigns inter alia such functions such as
    - 1) To oversee and approve the development of corporate strategy.
    - 2) Promote high standard of corporate governance.
    - 3) To monitor the implementation of organisational performance.
    - 4) To ensure that human resource matters (as listed) comply with best practice.
15. By any measure it is clear that the functions assigned to the External Oversight Body by comparison to those assigned to the Board of An Garda Síochána are considerably more subjectively based rather than objectively based. The inclusion of the terms ‘management matters’ in this Head sub-para (1) and (2) of the Defence (Amendment) Bill 2023 confirms a subjective intent which is absent in the functions assigned to the Board of An Garda Síochána.
16. In addition, the terms of the proposed Defence (Amendment) Bill 2023 cannot be divorced from the Independent Review Group – Defence Forces (IRG – DF) Report which recommended, inter alia that of the External Oversight Body “**holding the leadership of the Defence Forces to account for progress on the culture change programme**” (emphasis added). (IRG - DF Report, Introduction P 9) and cited by officials of the Department of Defence in their witness testimony to the Joint Committee in their opening statement on 30 Jan 2024. In ARCO’s opinion this intent, albeit stating



that it being ‘without prejudice to,’ does not sit well with Section 13 of the Defence Act 1954. Link to Report of the Independent Review Group – Defence Forces:

<https://www.gov.ie/en/publication/4eb09-report-of-the-independent-review-group-on-dignity-and-equality-issues-in-the-defence-forces/>

17. Therefore, ARCO posits that the functions assigned to the External Oversight Body go far beyond ‘oversight’. They provide for a function in the process and implementation of the programme of change. These should properly remain within the professional competence of the relevant military leadership, namely the Chief of Staff and Deputy Chiefs of Staff Operations and Support, subject of course to policy imprimatur, legislative compliance, and best practice in the Defence Forces, as is provided for in the Board of An Garda Síochána.
18. Head 6 sub-para (1) would fully address the requirement for proper oversight if the term ‘human resource management matters’ was replaced by ‘human resource policy matters’, and accordingly ARCO strongly commends its inclusion in the Defence (Amendment) Bill 2023.
19. Head 6 sub-para (2) (a), (b), (c) should be deleted from this Defence (Amendment) Bill 2023 and properly embraced by secondary legislation. These proposed provisions are a gross interference and an impediment to the Chief of Staff in his/her primary function of maximising military capability.
20. In respect of sub-para (2) (d), ARCO has no issue.
21. With regard to Head 6, sub-para (4), as the rank level encompassed by the provision is in the main for a command level appointment, critical to the delivery of military efficiency and effectiveness, the Chief of Staff must have a statutory role in advising on the selection process and criteria relating to the knowledge, ability, and suitability of the officer for promotion.
22. With regard to Head 6, sub-para (5), as the civilian appointed to work directly with the Defence Forces will report to a military officer, the Chief of Staff or an officer appointed by him/her must have a statutory role in advising on the selection process and criteria relating to the knowledge, ability, and suitability of the civilian for such appointment.

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

23. The provisions of Head 8 can be interpreted as marking a de facto diminution of the functions assigned to the Chief of Staff in Section 13 of the Defence Act 1954. ARCO has previously and repeatedly indicated its concerns on the inclusion of the Secretary General, Department of Defence on the External Oversight Body, and the exclusion of the Chief of Staff. In ARCO’s view, neither should be on this Body if it was to be truly



external and independent. ARCO's position has not changed.

24. In ARCO's experience the holder of the appointment of Secretary General as the ex-officio member, will heavily influence the thinking and deliberations of the External Oversight Body. Consequently, in ARCO's view the Secretary General will effectively control the entire Human Resource functions within the Defence Forces. Recalling that civilians have also been appointed to the Defence Forces as the Head of Strategic Human Resources and to drive Transformation adds to these concerns.
25. Furthermore, ARCO submits that the Joint Committee should give very careful consideration to another effect that may not be so apparent from the provisions of the Defence (Amendment) Bill 2023. This is to do with the quality, independence and diversity of advice being delivered to the Minister and by extension to the Government and Oireachtas. ARCO notes that from previous testimony given to the Joint Committee that the External Oversight Body sees its line of reporting through the Department of Defence to the Minister. In effect this means that the considered advice of the Oversight Body will go through the filter of the Department of Defence to the Minister, in the first instance, without any professional military input, but also through the lens of an official, namely the Secretary General, with a significant level of influence at two of the levels of oversight.
26. ARCO submits that when the provisions relating to:
- a. the level of subjective oversight,
  - b. the negative impact on military effectiveness and capabilities,
  - c. the sidelining of the military leadership, namely the General Staff, from crucial areas of their statutory roles and functions,

are fully considered, they present dangers to the democratic function of Government with the apparent undermining and move from civil control, however subjective it is at present, to one of allowing an unelected official exercise this function. This will, of course, exacerbate the historical dysfunctionality that has long existed in the relationship between the Civil Side of the Department of Defence and the Defence Forces. It will also serve to remove the leadership function from the military leadership of the Defence Forces, reducing it to the status of a subordinate reporting body. This, critically and ominously, is all to be put in place before the introduction of the long overdue legislative provisions that seek to give effect to the recommendations of the Commission on the Defence Forces.

27. By comparison, the membership of the Board of An Garda Síochána, does not include the Secretary-General of the Department of Justice. It furthermore makes provision that whilst the Garda Commissioner shall not be a member of the Board or a committee of the Board, but may, in accordance with procedures specified by the Board or such a



committee, attend meetings of the Board or the committee concerned, and may speak, and give advice, at such meetings. [Policing, Security and Community Safety Act 2024 Chap 2 Para 22 (10)]. This Act also provides for the Board of An Garda Síochána to advise the Minister on appropriate criteria by which the performance of the Commissioner can be appraised. It does NOT hold the Commissioner to account for his/her performance, as is clearly the case recommended by the IRG-DF and clearly codified in the Defence (Amendment) Bill 2023.

28. ARCO posits that, notwithstanding the recommendations in the IRG-DF Report on the composition of the External Oversight Body, that the Secretary General of the Department of Defence should NOT be a member. It would then be truly external, independent, and transparent.
29. RESPECT is at the heart of the matters at issue here, respect for the professional competence and integrity of the leadership of the Defence Forces, and such respect needs to emanate from Government in the first instance. The professional competence of the Garda Commissioner to lead An Garda Síochána is clearly recognised in the Policing, Security and Community Safety Act 2024, whereas, in the case of the Chief of Staff it is denied and undermined by the provisions of the Defence (Amendment) Bill 2023.

## **SUMMARY**

30. ARCO submits to the Joint Committee on Foreign Affairs and Defence that the introduction of the two Heads relating to the External Oversight Body in the Defence (Amendment) Bill 2023, at this time, will have the effect to further weaken the position of the Office of the Chief of Staff in the exercise of his/her functions, duties, and responsibilities as well as in delivering military advice and accountability to Government. It will allow a potentially dangerous transfer of diverse influence and advice, to a singular unelected civil servant. Your consideration of Heads 6 and 8 of the Defence (Amendment) Bill 2023 must include the intent and effects of the Bill from the perspective of whether it strengthens or weakens the State's ability to protect and defend its citizens. In ARCO's view these proposed provisions will further weaken our national defence and the State's capability and in meeting its international obligations.
31. One cannot but help wondering if there has been a paradigm shift where the cultural issues highlighted in the Independent Review Group Report are now seen as being the cause of the demise and near collapse of the Defence Forces and NOT the decades of neglect and underinvestment by successive governments, together with an overly subjective civil control of all matters affecting DF strategic development, military capabilities, readiness, and viability.





## **RECOMMENDED AMENDMENTS**

32. Head 6 sub-para (1) would fully address the requirement for proper oversight if the term ‘human resource management matters’ was replaced by ‘human resource policy matters’, and accordingly ARCO would commend its inclusion in the Defence (Amendment) Bill 2023.
33. Head 6 sub-para (2) (a), (b), (c) should be deleted from this Defence (Amendment) Bill 2023 and properly embraced by secondary legislation. They are a gross interference and an impediment to the Chief of Staff in his/her primary function of maximising military capability.
34. In respect of Head 6, sub-para (2) (d), ARCO has no issue.
35. With regard to Head 6, sub-para (4), as the rank level encompassed by the provision is in the main for a military command level appointment, critical to the delivery of military effectiveness, the Chief of Staff should have statutory role in advising on the selection process and criteria relating to the knowledge, ability, and suitability of the officer for promotion.
36. With regard to Head 6 sub-para (5), as the civil servant appointed to work directly with the Defence Forces will report to a military officer, the Chief of Staff or an officer appointed by him/her should have a statutory role in advising on the selection process and criteria relating to the knowledge, ability, and suitability of the civil servant for such appointment.
37. That the Secretary General of the Department of Defence NOT be a member of the External Oversight Body.

**APPROVED BY THE EXECUTIVE COMMITTEE**

**ASSOCIATION OF RETIRED COMMISSIONED OFFICERS (ARCO)**