



Number 33 of 2021

Defence (Amendment) Act 2021



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ACTS REFERRED TO

Defence (Amendment) (No. 2) Act 1960 (No. 44)

Defence (Amendment) (No. 2) Act 1979 (No. 28)

Defence (Amendment) Act 2006 (No. 20)

Defence Act 1954 (No. 18)

Defence Acts 1954 to 2015

European Parliament Elections Act 1997 (No. 2)



Number 33 of 2021

DEFENCE (AMENDMENT) ACT 2021

An Act to amend the Defence Act 1954, the Defence (Amendment) (No. 2) Act 1960, the Defence (Amendment) (No. 2) Act 1979; and the Defence (Amendment) Act 2006; and to provide for related matters. *[9th November, 2021]*

Be it enacted by the Oireachtas as follows:

Definitions

1. In this Act—

“Act of 1960” means the Defence (Amendment) (No. 2) Act 1960;

“Act of 1979” means the Defence (Amendment) (No. 2) Act 1979;

“Act of 2006” means the Defence (Amendment) Act 2006;

“Principal Act” means the Defence Act 1954.

Insertion of new section 17A in Principal Act

2. The Principal Act is amended by the insertion of the following section after section 17:

“Operational control

17A. (1) In this section—

‘Act of 2006’ means 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;

‘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—

- (a) accomplish certain missions or tasks which are limited by function, time or location,

- (b) deploy the contingent, and
 - (c) 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 to a Force Commander the operational control of a contingent, or member, of the Defence Forces.
- (3) A delegation of operational control by the Minister under subsection (2) may be subject to such exceptions and limitations as he or she, having had regard to such requirements as may be necessary for the efficient operation of the mission concerned, may from time to time determine.
- (4) A delegation of operational control by the Minister under subsection (2) shall—
- (a) be in writing,
 - (b) be issued to the Force Commander of the mission concerned,
 - (c) 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 issued to him or her by a member of the international force in his or her military chain of command, subject to any exclusion as may be specified in the delegation,
 - (d) in so far as 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 that such member is handed over as soon as practicable to the contingent commander, or the designated senior officer, of the Defence Forces,
 - (e) provide that each member of the Defence Forces in respect of whom the delegation is made shall cooperate with the military police component of the international force, and
 - (f) include any other ancillary provisions as he or she considers necessary for the efficient operation of the mission concerned.”.

Non-enlistment of minors

3. Chapter II of Part IV of the Principal Act is amended—

- (a) in section 53—
 - (i) in subsection (1)(a), by the deletion of “(including a minor)”, and

- (ii) in subsection (1)(b)—
 - (I) by the substitution of “person” for “boy”,
 - (II) by the insertion of “, prior to its amendment by *section 3* of the *Defence (Amendment) Act 2021*,” after “this section”, and
 - (III) by the substitution of “he or she attains” for “he attains”,
- (b) in section 54, by the deletion of “(including a minor)”,
- (c) in section 55—
 - (i) in subsection (1)(a), by the deletion of “(including a minor)”, and
 - (ii) in subsection (1)(b)—
 - (I) by the substitution of “person” for “boy”,
 - (II) by the insertion of “, prior to its amendment by *section 3* of the *Defence (Amendment) Act 2021*,” after “this section”, and
 - (III) by the substitution of “he or she attains” for “he attains”,
- (d) by the deletion of sections 76 and 77, and
- (e) in section 80, by the deletion of “76, 77,”.

Voluntary military service of officer of Reserve Defence Force

4. The Principal Act is amended by the insertion of the following section after section 86:

“Voluntary military service of officer of Reserve Defence Force

- 86A.** (1) An officer of the Reserve Defence Force may notify his or her commanding officer in writing that the officer is available for deployment on supplemental military service, subject to the officer’s consent being given under subsection (7).
- (2) A notification under subsection (1) shall specify—
 - (a) the nature of the supplemental military service to which the officer concerned may consent under subsection (7),
 - (b) the duration and frequency of the periods of supplemental military service to which the officer concerned may consent under subsection (7), and
 - (c) the dates from and to which the officer concerned may be available to be deployed on supplemental military service.
 - (3) An officer of the Reserve Defence Force who has provided a notification under subsection (1) may notify his or her commanding officer in writing that the officer is no longer available for deployment on supplemental military service.
 - (4) Where the Minister determines that—

- (a) there is a particular deficiency in skills or expertise in the Permanent Defence Force which would be addressed by the deployment of an officer of the Reserve Defence Force on supplemental military service, or
 - (b) it is otherwise in the best interests of the Defence Forces to deploy an officer of the Reserve Defence Force on supplemental military service,
- the Minister may approve the deployment of an officer of the Reserve Defence Force on supplemental military service.
- (5) An approval under subsection (4) shall specify—
 - (a) the purpose of the deployment concerned, and
 - (b) the number of officers to be deployed as part of that deployment.
 - (6) An approval under subsection (4) may specify matters other than those referred to in subsection (5), including, but not limited to—
 - (a) the skills or qualifications that an officer is required to have for the purposes of the deployment concerned, and
 - (b) the duration of that deployment.
 - (7) Subject to subsection (10), where an officer of the Reserve Defence Force has provided a notification under subsection (1) and has not provided a notification under subsection (3), the prescribed military authority may request, and the officer may give, the officer's consent to deployment on supplemental military service in respect of which an approval has been given under subsection (4).
 - (8) A request of the prescribed military authority under subsection (7) shall—
 - (a) be in writing, and
 - (b) specify—
 - (i) the nature,
 - (ii) the duration,
 - (iii) the start date, and
 - (iv) the end date,

of the supplemental military service concerned.
 - (9) A consent of an officer of the Reserve Defence Force under subsection (7) shall be given in writing to the prescribed military authority.
 - (10) The prescribed military authority shall not seek the consent of an officer of the Reserve Defence Force under subsection (7) where the total number of days of military service provided by the officer in a 12

month period would, if the officer were to be so deployed, exceed the number of days prescribed for the purpose of this subsection.

- (11) Subject to subsection (12), an officer of the Reserve Defence Force may withdraw a consent given under subsection (7).
- (12) An officer of the Reserve Defence Force deployed on supplemental military service may only withdraw his or her consent to that deployment with the consent of the prescribed military authority, which consent shall not be unreasonably withheld.
- (13) Where an officer of the Reserve Defence Force withdraws his or her consent to deployment on supplemental military service—
 - (a) in a case in which the deployment has not commenced, the officer shall not be deployed on that service, and
 - (b) in a case in which the deployment has commenced, the officer shall not be liable to continue that service.
- (14) An officer of the Reserve Defence Force shall be liable to render supplemental military service only where—
 - (a) the Minister has given approval to deployment on that supplemental military service under subsection (4), and
 - (b) the officer has given and not withdrawn his or her consent to deployment on that supplemental military service.
- (15) The Minister may prescribe a number of days for the purposes of subsection (10).
- (16) The Minister shall, when prescribing a number of days for the purposes of subsection (10), have regard to—
 - (a) the voluntary nature of supplemental military service,
 - (b) the duration of training which may be required before deployments on supplemental military service,
 - (c) the operational requirements of the Defence Forces,
 - (d) the employment and education commitments of officers of the Reserve Defence Force, and
 - (e) the training requirements of officers of the Reserve Defence Force.
- (17) In this section, ‘supplemental military service’ means military service, either within or outside the State, which an officer of the Reserve Defence Force would not be liable to render under other provisions of the Defence Acts 1954 to 2015.’.

Voluntary military service of reservist

5. The Principal Act is amended by the insertion of the following section after section 91:

“Voluntary military service of reservist

91A. (1) A reservist may notify his or her commanding officer in writing that the reservist is available for deployment on supplemental military service, subject to the reservist’s consent being given under subsection (7).

(2) A notification under subsection (1) shall specify—

(a) the nature of the supplemental military service to which the reservist concerned may consent under subsection (7),

(b) the duration and frequency of the periods of supplemental military service to which the reservist concerned may consent under subsection (7), and

(c) the dates from and to which the reservist concerned may be available to be deployed on supplemental military service.

(3) A reservist who has provided a notification under subsection (1) may notify his or her commanding officer in writing that the reservist is no longer available for deployment on supplemental military service.

(4) Where the Minister determines that—

(a) there is a particular deficiency in skills or expertise in the Permanent Defence Force which would be addressed by the deployment of a reservist on supplemental military service, or

(b) it is otherwise in the best interests of the Defence Forces to deploy a reservist on supplemental military service,

the Minister may approve the deployment of a reservist on supplemental military service.

(5) An approval under subsection (4) shall specify—

(a) the purpose of the deployment concerned, and

(b) the number of reservists to be deployed as part of that deployment.

(6) An approval under subsection (4) may specify matters other than those referred to in subsection (5), including, but not limited to—

(a) the skills or qualifications that a reservist is required to have for the purposes of the deployment concerned, and

(b) the duration of that deployment.

(7) Subject to subsection (10), where a reservist has provided a notification under subsection (1) and has not provided a notification under subsection (3), the prescribed military authority may request,

and the reservist may give, the reservist's consent to deployment on supplemental military service in respect of which an approval has been given under subsection (4).

- (8) A request of the prescribed military authority under subsection (7) shall—
 - (a) be in writing, and
 - (b) specify—
 - (i) the nature,
 - (ii) the duration,
 - (iii) the start date, and
 - (iv) the end date,of the supplemental military service concerned.
- (9) A consent of a reservist under subsection (7) shall be given in writing to the prescribed military authority.
- (10) The prescribed military authority shall not seek the consent of a reservist under subsection (7) where the total number of days of supplemental military service provided by the reservist in a 12 month period would, if the reservist were to be so deployed, exceed the number of days prescribed for the purpose of this subsection.
- (11) Subject to subsection (12), a reservist may withdraw a consent given under subsection (7).
- (12) A reservist deployed on supplemental military service may only withdraw his or her consent to that deployment with the consent of the prescribed military authority, which consent shall not be unreasonably withheld.
- (13) Where a reservist withdraws his or her consent to deployment on supplemental military service—
 - (a) in a case in which the deployment has not commenced, the reservist shall not be deployed on that service, and
 - (b) in a case in which the deployment has commenced, the reservist shall not be liable to continue that service.
- (14) A reservist shall be liable to render supplemental military service only where—
 - (a) the Minister has given approval to deployment on that supplemental military service under subsection (4), and
 - (b) the reservist has given and not withdrawn his or her consent to deployment on that supplemental military service.

- (15) The Minister may prescribe a number of days for the purposes of subsection (10).
- (16) The Minister shall, when prescribing a number of days for the purposes of subsection (10), have regard to—
- (a) the voluntary nature of supplemental military service,
 - (b) the duration of training which may be required before deployments on supplemental military service,
 - (c) the operational requirements of the Defence Forces,
 - (d) the employment and education commitments of reservists, and
 - (e) the requirement of reservists to undergo training under section 92.
- (17) In this section, ‘supplemental military service’ means military service, either within or outside the State, which a reservist would not be liable to render under other provisions of the Defence Acts 1954 to 2015.”.

Attachment of reservist on voluntary military service

6. The Principal Act is amended by the insertion of the following section after section 95:

“Attachment of reservist on voluntary military service

95A. Where a reservist has been deployed on military service under section 91A, that reservist may, during any period of such service, be deployed for service with, or be attached to, any staff, unit or other element of the Defence Forces.”.

Prohibition on political activities when on voluntary military service

7. The Principal Act is amended by the insertion of the following section after section 103:

“Prohibition on political activities when on voluntary military service

103A. A member of the Reserve Defence Force shall not, while deployed on military service under section 86A (in the case of an officer) or section 91A (in the case of a reservist)—

- (a) canvass on behalf of, or collect contributions for, any political organisation or society, or
- (b) address a meeting of a political organisation or society.”.

Amendment of section 118 of Principal Act (persons subject to military law as officers)

8. Section 118(1)(c) of the Principal Act is amended—

- (a) in subparagraph (iii), by the substitution of “in a military hospital, or” for “in a military hospital,”, and
- (b) by the insertion of the following subparagraph after subparagraph (iii):

“(iv) he is deployed on military service under section 86A,”.

Amendment of section 119 of Principal Act (persons subject to military law as men)

9. Section 119(b) of the Principal Act is amended—

(a) in subparagraph (vi), by the substitution of “is in uniform, or” for “is in uniform,”, and

(b) by the insertion of the following subparagraph after subparagraph (vi):

“(vii) he is deployed on military service under section 91A,”.

Amendment of section 174(2) of Principal Act (assembly of court of inquiry to deal with absence of man of Reserve Defence Force)

10. Section 174 of the Principal Act is amended, in subsection (2), by the substitution of “by reason of his being called out on permanent service or in aid of the civil power or for annual training or being deployed on military service under section 91A” for “by reason of his being called out on permanent service or in aid of the civil power or for annual training”.

Amendment of section 182(1) and (2) of Principal Act (confession of desertion or fraudulent enlistment)

11. Section 182 of the Principal Act is amended by the substitution of “called out on permanent service or deployed on military service under section 91A” for “called out on permanent service” in each place where it occurs.

Amendment of section 178E of Principal Act (appeal to summary court-martial)

12. Section 178E(3) of the Principal Act is amended by the substitution of the following paragraph for paragraph (b):

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

Miscellaneous amendments of Principal Act

13. The Principal Act is amended—

(a) by the substitution of the following section for section 74:

“Discharge of reservists in certain public service positions

74. A reservist who is—

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

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

(c) regarded under Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy,

shall thereupon stand, by virtue of this section, discharged from the Reserve Defence Force.”,

and

(b) by the repeal of section 318.

Amendment of section 2 of Act of 1960 (Despatch of contingents of the Permanent Defence Force for service outside the State with International United Nations Forces)

14. Section 2 of the Act of 1960 is amended—

(a) in subsection (1)—

(i) by the substitution of “subject to subsections (2), (3) and (4)” for “subject to subsections (2) and (3)”, and

(ii) by the substitution of “Defence Forces” for “Permanent Defence Force” in each place where it occurs,

(b) in subsection (2), by the substitution of “Defence Forces” for “Permanent Defence Force” in each place where it occurs,

(c) in subsection (3), by the substitution of “Defence Forces” for “Permanent Defence Force”, and

(d) by the insertion of the following subsection after subsection (3):

“(4) A member of the Reserve Defence Force shall not be despatched under subsection (1), (2) or (3) unless that member has consented to the despatch in accordance with section 86A or 91A, as the case may be, of the Principal Act.”.

Amendment of section 4 of Act of 1960 (Amendments of the Principal Act)

15. Section 4 of the Act of 1960 is amended—

(a) in subsection (1), by the substitution of “Defence Forces” for “Permanent Defence Force”, and

(b) in subsection (5), by the substitution of “Defence Forces” for “Permanent Defence Force”.

Amendment of section 4 of Act of 1979 (application of sections 53, 54 and 55 of Principal Act to women)

16. Section 4 of the Act of 1979 is amended by the deletion of “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”.

Amendment of section 3 of Act of 2006 (Despatch of contingent or member of the Permanent Defence Force for external service for purposes other than service with International United Nations Force)

17. Section 3 of the Act of 2006 is amended—

(a) in subsection (1), by the substitution of “Subject to subsection (3), a contingent or member of the Defence Forces” for “A contingent or member of the Permanent Defence Force”, and

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

“(3) A member of the Reserve Defence Force—

(a) shall not be despatched under subsection (1), unless the member has consented to the despatch in accordance with section 86A or 91A, as the case may be, of the Principal Act, and

(b) shall not be despatched for any purpose specified in paragraph (a) of subsection (1).”.

Short title and commencement

18. (1) This Act may be cited as the Defence (Amendment) Act 2021.

(2) 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.