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**BILLE AN CHOIMISIÚIN UM CHEARRADH  
PIANBHREITHEANNA BREITHIÚNACHA, 2013  
JUDICIAL SENTENCING COMMISSION BILL 2013**

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*Mar a tionscnaíodh  
As initiated*

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[No. 17 of 2013]

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ACT REFERRED TO

Courts Service Act 1998

1998, No. 8



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# **BILL**

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*entitled*

AN ACT TO PROMOTE GREATER TRANSPARENCY AND  
CONSISTENCY IN JUDICIAL SENTENCING, WHILST  
MAINTAINING THE INDEPENDENCE OF THE  
JUDICIARY, TO ESTABLISH A JUDICIAL SENTENCING  
10 COMMISSION, TO PROMOTE A CLEAR, FAIR AND  
CONSISTENT APPROACH TO JUDICIAL SENTENCING,  
TO PRODUCE ANALYSIS AND RESEARCH ON SENT-  
ENCING, AND TO PROMOTE PUBLIC CONFIDENCE IN  
JUDICIAL SENTENCING.

15 BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

## PART 1

### PRELIMINARY AND GENERAL

**1.**—(1) This Act may be cited as the Judicial Sentencing Com- Short title.  
mission Act 2013.

20 (2) This Act shall come into operation on such day or days as may  
be appointed by order or orders made by the Minister, either gener-  
ally or with reference to any particular purpose or provision, and  
different days may be so appointed for different purposes and differ-  
ent provisions of this Act.

25 **2.**—In this Act—

Interpretation.

“Minister” means the Minister for Justice and Equality;

“Courts Service” means the Courts Service established under the  
Courts Service Act 1998.

30 **3.**—The Minister may make regulations for the purpose of amend- Minister may make  
ing definitions contained in this Act. regulations.

PART 2

JUDICIAL SENTENCING COMMISSION

Establishment of  
Judicial Sentencing  
Commission.

4.—(1) There shall be established a body to be known as the  
Judicial Sentencing Commission to exercise the functions assigned to  
it by this Act.

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(2) The Commission shall stand established on such day as the  
Minister may by order appoint.

Membership of  
Commission.

5.—(1) The Commission shall consist of—

(a) eight Judicial Members that shall be appointed by the  
Chief Justice;

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(b) six non-Judicial Members that shall be appointed by the  
Minister with the agreement of the Chief Justice.

(2) The Chief Justice shall appoint—

(a) a Judicial Member as Chairman of the Commission (“the  
Chairperson”), and

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(b) another Judicial Member to be Deputy Chairperson of the  
Commission (“the Deputy Chairperson”).

(3) A person is eligible for appointment as a Judicial Member of  
the Commission if the person is—

(a) a Judge of the Supreme Court;

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(b) a Judge of the High Court;

(c) a Judge of the Circuit Court;

(d) a Judge of the District Court.

(4) The Judicial Members of the Commission shall include at least  
one Supreme Court Judge, one High Court Judge, one Circuit Court  
Judge and one District Court Judge.

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(5) The Chief Justice shall have regard to the desirability of  
appointing to the Commission Judicial Members who have  
experience in presiding over and exercising the criminal jurisdiction  
of their Courts.

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(6) A person is eligible for appointment as a non-Judicial Member  
of the Commission if the person appears to the Minister to have  
experience in one or more of the following areas—

(a) criminal defence;

(b) criminal prosecution;

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(c) policing;

(d) sentencing policy and the administration of justice;

(e) the promotion of the welfare of victims of crime;

(f) academic study or research relating to criminal law or criminology;

(g) the use of statistics, and

(h) the rehabilitation of offenders.

5 (7) Each Member of the Judicial Sentencing Commission shall hold office for a term of seven years unless he or she resigns or is removed from office on grounds of incapacity or stated misbehaviour.

10 (8) The Chief Justice may remove a Judicial Member or a non-Judicial Member from Office on the grounds of incapacity or stated misbehaviour.

(9) The validity of any act carried out by the Commission is not affected by any vacancy among its members or by any defect in the appointment of a member in accordance with this Act.

15 (10) The Minister may pay—

(a) a fee to any non-Judicial Member, and

(b) such expenses as the Chief Justice shall determine as being due to any Judicial Member.

20 (11) All costs of the Commission shall be met out of the expenditure of the Courts Service.

6.—(1) The Commission shall, as soon as is practicable after the end of each calendar year, report to the Chief Justice on the exercise of the Commission's functions during the year. Annual report of Commission.

25 (2) The Chief Justice shall send a copy of this report to the Minister who shall lay a copy of the report before both Houses of the Oireachtas.

(3) The Commission shall publish the report once copies have been laid before both Houses of the Oireachtas.

### PART 3

#### SENTENCING GUIDELINES

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7.—(1) The Commission shall prepare within one year of coming into existence— Guidelines on sentencing.

35 (a) sentencing guidelines for the imposition of sentences by the Courts in respect of any person or corporate entity convicted on indictment of the commission of criminal offence;

40 (b) sentencing guidelines for the imposition of sentences by the Courts on any person or corporate entity who has pleaded guilty on indictment to the commission of a criminal offence at different stages of the prosecution process;

- (c) sentencing guidelines for the application or imposition of consecutive or concurrent sentences by the Courts in respect of any person or corporate entity convicted on indictment of the commission of a criminal offence;
  - (d) sentencing guidelines for the application or imposition of suspended sentences by the Courts in respect of any person or corporate entity convicted on indictment of the commission of a criminal offence; 5
  - (e) sentencing guidelines for the application or imposition of financial penalties by the Courts, as an alternative to the imposition of imprisonment, in respect of any person or corporate entity convicted on indictment of the commission of a criminal offence. 10
- (2) The Commission shall also prepare sentencing guidelines about any other aspect of the sentencing function of the Criminal Courts that a majority of Commission members believe appropriate. 15
- (3) Where the Commission has prepared sentencing guidelines under *subsection (1)* or *(2)*, it shall publish them as draft guidelines.
- (4) The Commission shall consult the following persons about the draft guidelines in advance of their publication— 20
- (a) the Chief Justice;
  - (b) such persons as the Chief Justice may direct;
  - (c) such other persons as the Commission considers appropriate.
- (5) Having consulted with the persons listed in *subsection (4)* the Commission shall, after making any amendments to the sentencing guidelines which it considers appropriate, publish them as definitive sentencing guidelines. 25
- (6) The Commission may review the sentencing guidelines issued under this section and may revise them, subject to the consultation process referred to in *subsection (4)*. 30
- (7) When preparing sentencing guidelines, the Commission shall have regard to the following—
- (a) the sentences imposed by Courts in Ireland for offences;
  - (b) the need to promote consistency in sentencing; 35
  - (c) the impact of sentencing decisions on victims of criminal offences;
  - (d) the need to promote public confidence in the criminal justice system;
  - (e) the cost of different sentences and their relevant effectiveness in preventing re-offending; 40
  - (f) the results of any monitoring carried out under *section 12* of this Act.

8.—(1) When exercising functions under *section 7*, the Commission shall have regard to the desirability of sentencing guidelines which relate to a particular offence being structured according to *subsections (2) to (5)* below.

Factors to be considered when sentencing.

5 (2) The guidelines should, if reasonably practicable given the nature of the offence, describe, by reference to one or more of the factors mentioned in *subsection (3)*, different categories of case involving the commission of the offence which illustrate in general terms the varying degrees of seriousness with which the offence may  
10 be committed.

(3) Those factors are—

- (a) the offenders culpability in committing the offence;
- (b) the harm caused, or intended to be caused or which might foreseeably have been caused, by the offence;
- 15 (c) such other factors as the Commission considers to be particularly relevant to the seriousness of the offence.

(4) The guidelines shall—

- (a) specify the range of sentences which, in the opinion of the Commission, may be appropriate for a Court to impose on an offender convicted of that offence;
- 20 (b) if the guidelines describe different categories of case in accordance with *subsection (2)*, specify for each category the range of sentences which, in the opinion of the Commission, it may be appropriate for a Court to impose on an offender in a case which falls within the category;
- 25 (c) specify the sentencing starting point in the range of sentences, or
- (d) if the guidelines describe different categories of case in accordance with *subsection (2)*, specify the sentencing starting point range for each of those categories.
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(5) The guidelines shall—

- (a) list any aggravating or mitigating factors which, by virtue of any enactment or other rule of law, the Court is required to take into account when considering the seriousness of the offence, and any other aggravating or mitigating factors which the Commission considers are relevant to such a consideration;
- 35 (b) list any other mitigating factors which the Commission considers are relevant in mitigation of sentence for the offence, and
- 40 (c) include criteria, and provide guidance, for determining the weight to be given to previous convictions of the offender and such of the other factors within *paragraph (a)* or *(b)* of this subsection as the Commission considers to be of particular significance in relation to the offence or the offender.
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PART 4

PROPOSALS BY THE COURT OF CRIMINAL APPEAL

Proposals by the Court of Criminal Appeal.

9.—(1) The Court of Criminal Appeal, when seised of an appeal against or with respect to the sentence passed for an offence, may propose to the Commission that sentencing guidelines be prepared or revised by the Commission under *section 7*— 5

- (a) in relation to a particular offence, a particular category of offence or a particular category of offenders, or
- (b) in relation to a particular matter affecting sentencing.

(2) This section is without prejudice to any power of the Court of Criminal Appeal to provide guidance relating to the sentencing of offenders in a judgment of the Court. 10

PART 5

COURTS' REGARD FOR SENTENCING GUIDELINES

Courts' regard for Sentencing Guidelines.

10.—(1) Every Court— 15

- (a) shall, in sentencing an offender, have regard to any sentencing guidelines which are relevant to the offender's case, and
- (b) shall, in exercising any other function relating to the sentencing of offenders, have regard to any sentencing guidelines which are relevant to the exercise of the function, 20

unless the Court is satisfied that to do so would be contrary to the interests of justice.

(2) The duty imposed on a Court by *subsection (1)(a)* to have regard to any sentencing guidelines which are relevant to the offender's case includes— 25

- (a) in all cases, a duty to consider the imposition of a sentence which is within the range of sentences, and
- (b) where the offence comes within those categories of cases in accordance with *section 8(2)*, a duty to decide which of the categories most resembles the case of the person convicted in order to identify the sentencing starting point in the offence range. 30

PART 6

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NECESSARY RESOURCES FOR SENTENCING GUIDELINES

Resources.

11.—(1) The Commission shall publish a resource assessment in respect of its definitive sentencing guidelines.



(2) A resource assessment in respect of any sentencing guidelines is an assessment by the Commission of the likely effect of the guidelines on—

- (a) the resources required for the provision of prison places,
- 5 (b) the resources required for the provision of probation service, and
- (c) the resources required for the provision of youth justice services.

10 (3) The resources assessment must be published within six months of the publication of the draft guidelines by the Commission.

## PART 7

### MONITORING

12.—(1) The Commission shall—

Monitoring.

- 15 (a) monitor the operation and effect of its sentencing guidelines, and
- (b) consider what conclusions can be drawn from the information obtained by virtue of *paragraph (a)*.

(2) The Commission shall report in its annual report—

- (a) information obtained under *subsection (1)(a)*, and
- 20 (b) any conclusions or recommendations drawn by the Commission under *subsection (1)(b)*.