



**AN BILLE UM NÓSANNA IMEACHTA I nDÁIL LE
CEAPACHÁIN BHREITHIÚNACHA A ATHCHÓIRIÚ, 2013
REFORM OF JUDICIAL APPOINTMENTS PROCEDURES
BILL 2013**

EXPLANATORY MEMORANDUM

Introduction

The Bill amends the procedures used by the Judicial Appointments Advisory Board to nominate individuals for positions within the judiciary in order to end the practice of political appointments to the bench. Confidence in the justice system is contingent on a judiciary which is free from political control or political or other bias. It is essential that there is an independent and impartial judiciary which is representative of the community it serves.

A truly representative judiciary would enhance confidence in the justice system. It would also promote the development of a non-partisan judiciary, and thereby further promote a culture of judicial independence. Future judicial appointments should be drawn from a wider pool of qualified candidates that is fully representative of the community in order to eradicate the corrosive and unaccountable system of patronage previously in operation.

There must be a fair and accountable appointment process for the judiciary which is representative of the public interest. As outlined above, in the appointment of judicial office holders there should be no discrimination on any of the prohibited grounds. Indeed, there should be a policy of affirmative action to increase judicial diversity however it is beyond the scope of this Bill to fully include this.

Judicial appointments should be made on the basis of merit from a list of qualified candidates who are representative of the community, and on an affirmative action basis between candidates of similar competence until such time as a representative judiciary is achieved.

Any potential candidate should satisfy the Judicial Appointments Advisory Board that:

- they have the relevant legal experience.
- they can make judicial decisions with integrity, fairness and impartiality.

- they are knowledgeable on human rights and equality legislation.

The appointment procedures should be transparent to enhance public confidence in the process.

Section 1 sets out the relevant definitions.

Section 2 stipulates that all statutory provisions governing the operation of the Judicial Appointments Advisory Board shall be interpreted in accordance with the UN Basic Principles on the Independence of the Judiciary (1985) and the Bangalore Draft Code of Judicial Conduct (2001). The Basic Principles on the Independence of the Judiciary were formulated to assist United Nations Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles describe the role of judges in relation to the system of justice and to the importance of their selection, training and conduct. The Bangalore Draft Code of Judicial Conduct 2001 was adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002.

Section 3 sets out additional criteria which a candidate for a judicial position must hold. The Board's main purpose is to identify persons and inform the Government of suitably qualified persons for appointment to judicial office. The Board makes its recommendations on the basis of criteria laid down in section 16(7) of the Courts and Courts Officers Act i.e. where a person: has displayed in his/her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned; is suitable on the grounds of character and temperament; is otherwise suitable; and complies with requirements of section 19 of the Act (tax compliance).

The criteria for appointment has been criticised by many in the past for being ill-defined and overly subjective and there is a clear need to replace this criteria to ensure that it is transparently meritocratic.

Section 4 sets out that in the appointment of judicial office holders there should be no discrimination on any of the prohibited grounds.

Section 5 is part of a move to work towards a policy of affirmative action to increase judicial diversity.

Section 6 aims to ensure that the practice of hiring political appointees for the bench is ended.

Section 7 changes the construction of Board membership to make the chair of the Irish Human Rights Commission chair of the Board rather than the Chief Justice and increases the number of lay representatives to the Board to four from three in order to ensure that there is meaningful lay representation in keeping with Good Friday Agreement equivalence obligations.

Section 8 amends the number of candidates on the list that the Board may provide. Currently the Board must nominate a list of up to seven candidates which the Government is not obliged to choose from, and this will be reduced to three candidates.

Section 9 will enable the Board to provide advice on the promotion of members of the judiciary.

Section 10 obliges the Government to make public the reasons for appointing an individual to a position within the judiciary.

Section 11 sets out the short title and citation.

Deputy Pádraig Mac Lochlainn,
January, 2013.