



An Bille fá Chomhairle um Pianbhreith a Ghearradh, 2015
Sentencing Council Bill 2015

Mar a tionscnaíodh

As initiated



AN BILLE FÁ CHOMHAIRLE UM PIANBHREITH A GHEARRADH, 2015
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ACTS REFERRED TO

Companies Act 1990 (No. 33)

European Parliament Elections Act 1997 (No. 2)

Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)



AN BILLE FÁ CHOMHAIRLE UM PIANBHREITH A GHEARRADH, 2015
SENTENCING COUNCIL BILL 2015

Bill

entitled

An Act to establish a Sentencing Council and to provide for related matters. 5

Be it enacted by the Oireachtas as follows:

Definitions

1. For the purposes of this Act:

“Council” means the Sentencing Council, as established under *section 4* of this Act;

“Minister” means the Minister for Justice and Equality; 10

“Public Appointments Service” means the Public Appointments Service as established under the Public Service Management (Recruitment and Appointments) Act 2004.

Ministerial regulations

2. (1) The Minister may make regulations for the general purpose of this Act and may, by regulation, provide for any matter referred to in this Act as prescribed or to be prescribed. 15

(2) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation. 20

(3) Regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

Establishment day of Sentencing Council 25

3. The Minister shall, by order, appoint a day to be the establishment day of the Sentencing Council.

Establishment of Sentencing Council

4. (1) On the establishment day of the Sentencing Council, a body to be known as An Comhairle um Ghearradh Pianbhreitheanna, or in the English language, the 30

- Sentencing Council stands established to perform the functions assigned to it by this Act.
- (2) The official seal of the Sentencing Council shall be authenticated by the signature of—
 - (a) a member of the Sentencing Council, 5
 - (b) the Chairperson or other member of staff of the Sentencing Council authorised by the Sentencing Council to act in that behalf.
 - (3) Judicial notice shall be taken of the seal of the Sentencing Council and every document purporting—
 - (a) to be an instrument made by the Sentencing Council, and 10
 - (b) to be sealed with the seal of the Sentencing Council authenticated in accordance with *subsection (2)*,

shall be received in evidence and be deemed to be such instrument without proof, unless the contrary is shown.
 - (4) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal, may be entered into or executed on behalf of the Sentencing Council by any person generally or specially authorised by the Sentencing Council to act in that behalf. 15
 - (5) Subject to this Act, the Sentencing Council shall be independent in the performance of its functions. 20

Membership of Sentencing Council

5. (1) Subject to this section, the Sentencing Council shall comprise of 14 members:
- (a) 8 members of the judiciary to be appointed by the Chief Justice with the agreement of the Government (“judicial members”);
 - (b) 6 members to be appointed by the Government with the agreement of the Chief Justice following an appointment process and recommendations by the Public Appointment Service (“non-judicial members”). 25
 - (2) In appointing the members of the Sentencing Council the Chief Justice and the Government shall have regard to the objective of there being no fewer than 7 members who are women and no fewer than 7 members who are men. 30
 - (3) The members of the Sentencing Council shall elect a judicial member to be the Chairperson of the Sentencing Council and shall elect another judicial member to chair the Sentencing Council in the absence of the chairing member.
 - (4) A person is eligible for appointment as a judicial member if the person is—
 - (a) a judge of the Supreme Court, 35
 - (b) a judge of the Court of Appeal,
 - (c) a judge of the High Court or Criminal Court,
 - (d) a judge of the Circuit Court, or

- (e) a judge of the District Court.
- (5) The judicial members must include at least one judge of the Circuit Court and one judge of the District Court.
- (6) The Government shall invite the Public Appointments Service, in accordance with *subsection (1)(b)* to undertake a selection competition for the purpose of identifying and recommending to the Government persons who are suitable for appointment as non-judicial members of the Council in accordance with *subsection (8)*. 5
- (7) Subject to *subsection (6)*, the Minister shall agree with the Public Appointments Service the selection criteria and process that are to apply to the selection competition. 10
- (8) In making recommendations of persons who are suitable for appointment as non-judicial members of the Council under this section, the Public Appointments Service will have regard to the desirability of the members of the Council possessing knowledge of, and experience in, matters connected to one or more of the following:
- (a) criminal defence; 15
 - (b) criminal prosecution (including the Director of Public Prosecution);
 - (c) policing;
 - (d) sentencing policy and the administration of justice;
 - (e) the promotion of welfare of victims of crime;
 - (f) academic study or research relating to criminal law or criminology; 20
 - (g) the use of statistics;
 - (h) the rehabilitation of offenders.
- (9) The Chief Justice shall have the title of President of the Sentencing Council but shall not be a member of the Council.
- (10) The Government may appoint a person who has experience of sentencing policy to attend and speak at any meeting of the Council. 25
- (11) The Government may by order, in accordance with *section 3* of this Act, make provision—
- (a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members, 30
 - (b) enabling the Chief Justice to remove a judicial member from office on the grounds of incapacity or misbehaviour, and
 - (c) enabling the Government to remove a non-judicial member from office on the grounds of incapacity or misbehaviour.
- Ineligibility for appointment, disqualification for office of member of Council or committee, cessation of membership, etc. 35**
6. (1) A person is not eligible to be recommended for or appointed as a member of the Council or a committee if he or she is—

- (a) a member of either House of the Oireachtas,
 - (b) entitled under the rules of procedure of the European Parliament to sit in that Parliament, or
 - (c) a member of a local authority.
- (2) A person shall be disqualified for holding and shall cease to hold office as a member of the Council or a committee if he or she— 5
- (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with his or her creditors,
 - (c) is convicted on indictment of an offence,
 - (d) is convicted of an offence involving fraud or dishonesty, or 10
 - (e) has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act.
- (3) Where a member of the Council or a committee is—
- (a) nominated as a member of Seanad Éireann, 15
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament,
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, or 20
 - (d) elected or co-opted as a member of a local authority, he or she shall thereupon cease to be a member of the Council or the committee, as the case may be.

Functions of the Council

7. (1) The primary function of the Sentencing Council shall be to prepare sentencing guidelines relating to the sentencing of criminal offenders. 25
- (2) A sentencing guideline prepared in accordance with *subsection (1)* may be general in nature or limited to a particular offence, particular category of offence or a particular category of offender.
- (3) Where the Council has prepared guidelines in accordance with *subsection (1)* or *(2)*, it must publish them as draft guidelines and invite submissions from the public and a copy of such draft guidelines must be given to the following for consultation: 30
- (a) the Chief Justice;
 - (b) the Government;
 - (c) the Oireachtas Committee on Justice, Defence and Equality; and
 - (d) any other persons or group that the Council, Chief Justice or Government agree is appropriate. 35
- (4) Following the consultation process in accordance with *subsection (3)*, the Council

shall make any amendments to the guidelines that it considers appropriate and issue the guidelines as definitive guidelines.

- (5) The Council may, from time to time, review the sentencing guidelines, issued under this section, and revise them.
- (6) When exercising its functions under this section, the Council must have regard to the following: 5
- (a) the human rights implications of such a sentence;
 - (b) any current legislation relating to the imposition of sentencing for a particular offence or category of offender;
 - (c) the current sentences imposed by the courts in Ireland; 10
 - (d) the need to promote consistency in sentencing;
 - (e) the impact of sentencing decisions on victims of offences;
 - (f) the need to promote public confidence in the criminal justice system;
 - (g) the cost of different sentences and their relative effectiveness in preventing re-offending; 15
 - (h) the results of the monitoring carried out under *section 12*.
- (7) In having regard to *section 7(6)(b)* the Council shall make recommendations to the Government on any legislative changes it considers appropriate.
- (8) The Sentencing Council shall also carry out any other function relating to sentencing as it agrees with the Chief Justice and the Government. 20

Sentencing ranges

8. (1) When exercising its functions under *section 7* of this Act, the Council shall have regard to the desirability of sentencing guidelines which relate to a particular offence being structured in the way described in *subsections (2) to (5)*.
- (2) The guidelines should, if reasonably practicable given the nature of the offence, 25 describe by reference to one or more of the following factors, 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 be committed:
- (a) the offender's culpability in committing the offence;
 - (b) the harm caused, or intended to be caused or which might foreseeably have been 30 caused, by the offence;
 - (c) such other factors as the Council consider to be relevant to the seriousness of the offence in question.
- (3) The guidelines should—
- (a) specify the range of sentences ("the offence range") which, in the opinion of the 35 Council, it may be appropriate for a court to impose on an offender convicted of that offence, and
 - (b) if the guidelines describe different categories of case in accordance with

subsection (2), specify for each category the range of sentences (“the category range”) within the offence range which, in the opinion of the Council, it may be appropriate for a court to impose on an offender in a case which falls within the category.

- (4) The guidelines should also— 5
 - (a) specify the starting point in the offence range, or
 - (b) if the guidelines describe different categories of case in accordance with *subsection (2)*, specify the sentencing starting point in the offence range for each of those categories.
- (5) The guidelines should— 10
 - (a) (to the extent taken into account by categories of case described in accordance with *subsection (2)*) list any aggravating or mitigating factors which, by virtue of 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 Council considers are relevant to such a consideration, 15
 - (b) list any other mitigating factors which the Council considers are relevant in mitigation of sentence for the offence, and
 - (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)* as the Council considers to be of particular significance in relation to the offence or the offender. 20
- (6) The provision made in accordance with *subsections (2) to (5)* may differ for different circumstances or cases involving the offence.

Proposals by the Minister or Court of Appeal

- 9. (1) The Minister may propose to the Council that sentencing guidelines be prepared or revised by the Council under *section 7* of this Act— 25
 - (a) in relation to a particular offence, particular category of offence or particular category of offenders, or
 - (b) in relation to a particular matter affecting sentencing.
- (2) The Court of Appeal may propose to the Council that sentencing guidelines be prepared or revised by the Council under *section 7* of this Act— 30
 - (a) in relation to the relevant offence, or
 - (b) in relation to a category of offences within which the relevant offence falls.
- (3) A proposal under *subsection (2)* may be included in the appeal court’s judgment in the appeal. 35
- (4) If the Council receives a proposal under *subsection (1)* or *(2)* to prepare or revise any guidelines, it must consider whether to do so.
- (5) This section is without prejudice to any power of the appeal court to provide guidance relating to the sentencing of offenders in a judgment of the court.

Duty of court

10. Every court—

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, 5

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

Resource implications of guidelines

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11. (1) This section applies where the Council—

- (a) publishes draft guidelines, or
 - (b) issues guidelines as definitive guidelines.
- (2) The Council must publish a resource assessment in respect of the guidelines.
- (3) A resource assessment in respect of any guidelines is an assessment by the Council of the likely effect of the guidelines on— 15
- (a) the resources required for the provision of prison places,
 - (b) the resources required for probation provision, and
 - (c) the resources required for the provision of youth justice services.
- (4) The resources assessment must be published— 20
- (a) in a case within *subsection (1)(a)*, at the time of publication of the draft guidelines, or
 - (b) in a case within *subsection (1)(b)*, at the time the guidelines are issued or, as soon as reasonably practicable after the guidelines are issued.
- (5) The Council must keep under review any resource assessment published under this section, and, if the assessment is found to be inaccurate in a material respect, publish a revised resource assessment. 25

Monitoring

12. (1) The Council must—

- (a) monitor the operation and effect of its sentencing guidelines, and 30
 - (b) consider what conclusions can be drawn from the information obtained by virtue of *paragraph (a)*.
- (2) The Council must, in particular, discharge its duty under *subsection (1)(a)* with a view to drawing conclusions about—
- (a) the frequency with which, and extent to which, courts depart from sentencing guidelines, 35

- (b) the factors which influence the sentences imposed by courts,
 - (c) the effect of the guidelines on the promotion of consistency in sentencing, and
 - (d) the effect of the guidelines on the promotion of public confidence in the criminal justice system.
- (3) When reporting on the exercise of its functions under this section in its annual report for a financial year, the Council must include— 5
- (a) a summary of the information obtained under *subsection (1)(a)*, and
 - (b) a report of any conclusions drawn by the Council under *subsection (1)(b)*.

Duty to assess impact of policy and legislative proposals

- 13.** (1) This section applies where the Minister refers to the Council any government policy proposal, or government proposal for legislation, which the Minister considers may have a significant effect on one or more of the following: 10
- (a) the resources required for the provision of prison places;
 - (b) the resources required for probation provision;
 - (c) the resources required for the provision of youth justice services. 15
- (2) The Council must assess the likely effect of the proposal on the matters mentioned in *paragraphs (a) to (c) of subsection (1)*.
- (3) The Council must prepare a report of the assessment and send the report to the Minister.

Ministerial assistance

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- 14.** The Minister may provide the Council with such assistance as it requests in connection with the performance of its functions.

Annual report

- 15.** (1) The Council shall, not later than 30 April in each year, make a report (in this section referred to as the “annual report”) to the Minister and to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that Committee, on the performance of its functions during the preceding year. 25
- (2) The annual report shall be in such form and shall include information in respect of such matters as the Council considers appropriate. 30
- (3) The Council may make such other reports to the Minister relating to its functions as it considers appropriate.
- (4) The Council shall give to the Oireachtas Joint Committee on Justice, Defence and Equality, or any Oireachtas Joint Committee that may replace that committee such other information it may require in respect of— 35
- (a) the performance by the Council of its functions and its policies in respect of such performance,

- (b) any specific document or account prepared by it, or
 - (c) the annual report or any report referred to in *subsection (3)*.
- (5) For the purposes of *subsection (1)*, the period between the establishment day and the following 31 December shall be deemed to be a preceding year.
- (6) The Minister shall, as soon as is practicable, cause copies of the annual report or, as the case may be, a report referred to in *subsection (3)*, to be laid before each House of the Oireachtas. 5
- (7) The Council shall publish its annual report in such form and manner as it considers appropriate as soon as is practicable after *subsection (4)* has been complied with in respect of the report. 10

Review of operation

16. (1) The Minister shall, in consultation with the Minister for Public Expenditure and Reform, not later than 5 years after the establishment day of the Council, review the operation of the amendments of the Principal Act made by this Act insofar as those amendments relate to the Council. 15
- (2) A review under *subsection (1)* shall be completed not later than one year after its commencement.
- (3) Having completed the review, the Minister shall, in consultation with the Minister for Public Expenditure and Reform, prepare a report setting out such findings as the Minister considers appropriate consequent on such review. 20
- (4) The Minister shall cause a copy of a report prepared under *subsection (3)* to be laid before each House of the Oireachtas as soon as practicable after it has been prepared.

Short title and commencement

17. (1) This Act may be cited as the Sentencing Council Act 2015.
- (2) This Act shall come into operation on such day or days as the Minister 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. 25

An Bille fá Chomhairle um Pianbhreith a
Ghearradh, 2015

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do bhunú Comhairle um Pianbhreith a
Ghearradh agus do dhéanamh socrú i dtaobh
nithe gaolmhara.

*An Teachta Pádraig Mac Lochlainn a thug isteach,
8 Deireadh Fómhair, 2015*

Sentencing Council Bill 2015

BILL

(as initiated)

entitled

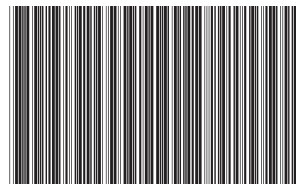
An Act to establish a Sentencing Council and to
provide for related matters.

*Introduced by Deputy Pádraig Mac Lochlainn,
8th October, 2015*

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(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€2.54



978-1-4468-3199-1