



**An Bille fá Choimisiún um Cheapacháin Bhreithiúnacha,
2016**

Judicial Appointments Commission Bill 2016

Meabhrán Míitheach
Explanatory Memorandum



**AN BILLE FÁ CHOIMISIÚN UM CHEAPACHÁIN
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Purpose of the Bill

The purpose of this Bill is to provide for the establishment of an independent Judicial Appointments Commission that would recommend persons for appointment to judicial office based solely on merit.

A merit based system of appointment will enhance the principle of judicial independence. In May 2012 the European Network of Councils for the Judiciary signed a declaration in Dublin that called for a clearly defined and published set of selection competencies against which candidates for appointment to judicial office should be assessed.

The Act establishes a Judicial Appointments Commission that will be required to make recommendations to the Minister for Justice based on merit. The Commission shall recommend and rank three individuals for each judicial vacancy and should government fail to nominate one of the persons who have been recommended by the Commission it shall publish in *Iris Oifigiúil* and on the website of the Department of Justice a reasoned written decision for not nominating one of the persons recommended by the Commission.

The Act is divided into four parts. Part 1 deals with preliminary and general matters. Part 2 deals with the establishment, functions and membership of the Commission. Part 3 deals with the judicial appointment process. Part 4 contains three miscellaneous sections that relate to reports and amendment of existing legislation.

PART 1

Preliminary and General

Part 1 provides standard provisions relating to citation, commencement, interpretation, repeal of Part IV of the Courts and Court Officers Act 1995 and regulations.

Section 1

Short Title and Commencement

This section sets out the short title of the Bill, which is to be the Judicial Appointments Commission Act 2016. As it is not a government Bill, it also provides for a specific commencement date.

Section 2

Interpretation

This is a standard provision to define the terms used in the Bill.

Section 3

Repeal

This section repeals part IV of the Courts and Court Officers Act 1995 which provides for the current system whereby the Judicial Appointments Advisory Board advises the government in respect of judicial appointments.

Section 4

Regulations

This section enables the Minister to make regulations and requires such regulations to be laid before each House of the Oireachtas.

PART 2

The Judicial Appointments Commission

Section 5

Establishment

This section provides that on the commencement day of the legislation a Judicial Appointments Commission will be established. It establishes the Commission as a statutory body to perform the functions assigned to it. It also provides that the Commission will be independent in the performance of its functions.

Section 6

Functions of the Commission

This section sets out the functions of the Commission. Subsection (1) provides that the Commission shall coordinate the application process for appointment to Judicial Office and shall recommend, based on merit, persons for nomination by the government for appointment to judicial office.

Subsection (2) provides that the Commission shall advertise for applications for judicial appointments, require applicants to complete application forms in such manner as may be prescribed, interview the applicants intended to be recommended, and maintain a website for the purpose of providing information about judicial appointments.

Subsection (3) provides that the Commission may consult persons concerning the suitability of applicants, invite persons to submit applications, arrange for the interviewing of applicants, and take whatever other steps are deemed necessary by the Commission to discharge its functions.

Subsection (4) provides that the Commission shall prepare a set of selection competencies against which applicants for Judicial Office shall be assessed.

Subsection (5) provides that these selection competencies will be published in Iris Oifigiúil and on the Commission's website.

Subsection (6) requires the Commission to keep a record of its deliberations.

Subsection (7) requires the Commission to produce an annual report and subsection (8) provides the Commission with latitude in respect of the procedures it thinks are necessary in order to carry out its functions.

Section 7

Membership of the Commission

This section provides that the Commission shall consist of twelve members, five of whom shall be Judicial Office Holders: the Chief Justice, the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court and the President of the District Court.

It also provides that the seven other members shall be non-judicial and shall be nominated by the Citizens Information Board, An Túdarás Um Ard-Oideachas, the Competition and Consumer Protection Commission, the Irish Human Rights and Equality Commission, Free Legal Advice Centres Ltd, the Law Society and the Bar Council.

Subsection (4) provides that the non-judicial members of the Commission must have certain attributes and knowledge.

Subsection (5) provides that the bodies nominating the non-judicial members shall provide a short statement stating why the nominated person is appropriate and satisfies the requirements of subsection (4).

Subsection (6) seeks to ensure that there is gender balance on the Commission.

Subsection (7) provides that there shall be no fewer than 5 women and/or 5 men on the Commission.

Section 8

Terms of Office of Members of the Commission

Subsection (1) provides that the Judicial Members of the Commission shall remain members for as long as that person holds the relevant Judicial Office.

Subsection (2) provides that all other members shall hold Office for a term of 4 years.

Subsections (3) and (4) provide that a non-judicial member can only hold office for no more than 8 years.

Subsection (5) provides for the resignation of a member of the Commission.

Subsection (6) provides for what occurs on the retirement or resignation of Judicial Members of the Commission.

Subsection (7) provides that the Commission may act notwithstanding a vacancy in its membership.

Subsection (8) provides for the filling of a vacancy on the Commission.

Section 9

Disqualification and Removal of Members of the Commission

This section provides the grounds upon which a member of the Commission may be removed from membership of the Commission and the procedure that operates where the government decides to remove a member from the Commission because of incapacity, stated misbehaviour, conflict of interest and/or unfitness.

Section 10

Staff and Services

This section provides that the Minister for Justice shall make available staff to the Commission so that it can carry out its functions.

Section 11

Expenses

This section provides that the expenses incurred by the Commission in the administration of this Act shall be provided by the Oireachtas.

PART 3

The Judicial Appointments Process

Section 12

Request by Minister for Nominations

Subsection (1) provides that where a Judicial Office stands vacant the Minister shall request the Commission to recommend three persons, in order of the Commission's preference, for nomination by the government.

Subsection (2) provides that where more than one Judicial Office stands vacant in the same Court, the Minister shall request the Commission to recommend a number of persons, which number shall not exceed two more than the number of vacancies, and that the recommendations shall be in order of the Commission's preference.

Subsection (3) provides that this request shall not apply to recommendations sought in respect of the Offices of Chief Justice, President of the Court of Appeal, President of the High Court, President of the Circuit Court and President of the District Court.

Section 13

Consideration of a Court's Required Competencies

This section provides that the Commission shall consider any particular competencies or expertise which may be required in any judicial appointment, including proficiency in the Irish language, having regard to the range of competencies or areas of expertise of the existing judges of that court.

Section 14

Applications for Judicial Vacancies

Subsection (1) provides for the advertisement by the Commission of Judicial vacancies.

Subsection (2) provides that a person interested in applying shall so inform the Commission in writing and provide the Commission with such information as the Commission may require.

Subsection (3) provides that a sitting Judge need not comply with subsection (2) if he or she seeks appointment to another Judicial Office.

Section 15

Criteria for Recommendation

Subsection (1) requires that the Commission shall recommend persons based solely on merit.

Subsection (2) requires the Commission to ascertain which applicants best demonstrate qualities and/or characteristics beneficial and/or necessary for Judicial appointment. These qualities and characteristics include integrity, independence, intellectual skill, temperament, common sense, sound judgment, impartiality, objectivity, fairness, equanimity, composure, sensibility, cultural sensitivity, courtesy, consideration, communication skills, work ethic, efficiency, organisational skills, and ability to command respect.

The Commission shall also assess whether the applicants possess certain legal skills or competencies such as a knowledge of the area in which the

applicant practiced, the law of evidence, the procedural law of the Court to which appointment is sought, Bunreacht na hÉireann, the law of the European Union, the law of the European Convention on Human Rights, legal broadmindedness, knowledge of case law and ability to master new areas of the law.

Subsection (3) provides that a person shall not be recommended unless the person has a tax clearance certificate, is of good character and temperament, undertakes to engage in judicial training, and complies with the qualification requirements set out in the Court's Supplemental Provisions Act 1961.

Subsection (4) provides that notwithstanding the obligation to appoint solely based on merit, the Commission may also have regard to the importance of promoting gender and cultural diversity within the judiciary, and ensuring there is sufficient numbers of Judges appointed with proficiency in the Irish language in order to hear a case through Irish.

Subsection (5) provides for the Commission to publish the clearly defined set of selection competencies within six months of enactment of the legislation.

Section 16

Undertaking to Engage in Training

This section provides that any person who wishes to be considered for appointment must give an undertaking that, if appointed, he or she will take a course of training as may be required by the Chief Justice or the President of the Court to which the person is appointed.

Section 17

Recommendation by the Commission

Subsection (1) provides that the Commission shall submit to the Minister the names of three persons whom the Commission recommends for nomination and shall rank those three persons in order of the Commission's preference.

Subsection (2) provides that where more than one Judicial office stands vacant the Commission shall submit to the Minister the names of a number of persons, which number shall not exceed two more than the number of vacancies, whom the Commission recommends for nomination and shall rank those persons in order of the Commission's preference.

Subsections (3) and (4) provide that the persons recommended must comply with the requirements set out in Section 15 of the Bill.

Subsection (5) provides that the Commission may interview persons whom it intends to recommend for nomination.

Subsection (6) provides that the Commission shall provide the Minister with particulars of the education and qualifications of the persons it is recommending.

Subsection (7) provides that if no suitable person applies, the Commission may re-advertise for applications.

Subsection (8) provides that the Commission may take into regard the particular requirements of a Court to which appointment is sought.

Subsection (9) provides that the Commission shall act at all times autonomously and independently.

Section 18

Confidentiality of Deliberations

This section provides that all deliberations and discussions of the Commission shall be kept confidential and shall not be disclosed unless disclosure is ordered by the High Court.

Section 19

Record of Deliberations

This section provides that the Commission shall maintain a sufficient record in relation to each application, that any application cannot be disclosed save by Order of the High Court and that the records and deliberations of the Commission shall not be amenable to Freedom of Information.

Section 20

Prohibition on Canvassing

This section precludes from consideration persons who have directly or indirectly canvassed the Commission.

Section 21

Restriction on Recommending Commission Members

This section provides that the Commission shall not recommend members of the Commission for appointment except where it makes recommendations in respect of the Office of Chief Justice and President of the Court of Appeal.

Section 22

Nomination to Judicial Office

Subsection (1) provides that when advising the President in relation to the appointment of a person to Judicial Office the government shall first consider for nomination for appointment the persons recommended by the Commission.

Subsection (2) provides that should the government not nominate one of the persons recommended by the Commission it shall publish a reasoned written decision for not doing so on the website of the Minister's Department.

Subsection (3) provides that a person's appointment to Judicial office shall be published in *Iris Oifigiúil* and the notice shall state whether or not the person was one of the persons recommended by the Commission to the Minister.

Subsection (4) provides that the reasoned written decision published in accordance with subsection (2) shall not identify persons who were recommended.

Section 23

Recommendation by the Commission for Nomination of Chief Justice

This section provides that the Commission will recommend to the Minister the names of three Judges of the Superior Courts who would be suitable for appointment to the Office of Chief Justice.

Section 24

Recommendation by the Commission for Nomination of President of the Court of Appeal

This section provides that the Commission will recommend to the Minister the names of three Judges of the Superior Courts who would be suitable for appointment to the Office of President of the Court of Appeal.

Section 25

Recommendation by the Commission for Nomination of President of the High Court

This section provides that the Commission will recommend to the Minister the names of three Judges of the Superior Courts who would be suitable for appointment to the Office of President of the High Court.

Section 26

Recommendation by the Commission for Nomination of President of the Circuit Court

This section provides that the Commission will recommend to the Minister the names of three Judges of the Circuit Court who would be suitable for appointment to the Office of President of the Circuit Court.

Section 27

Recommendation by the Commission for Nomination of President of the District Court

This section provides that the Commission will recommend to the Minister the names of three Judges of the District Court who would be suitable for appointment to the Office of President of the District Court.

Section 28

Recommendation by the Commission for Appointment of Persons as a Judge of the Court of Justice of the European Union or as a Judge of the General Court of the European Union

This section provides that the Commission will recommend to the Minister the names of three persons who would be suitable for appointment to the Office of Judge of the Court of Justice of the European Union or as a Judge of the General Court of the European Union.

Section 29

Recommendation by the Commission for Nomination of Persons as Candidates for Election as a Judge of the European Courts of Human Rights

This section provides that the Commission will recommend to the Minister for Foreign Affairs the names of three persons who would be suitable for nomination for election as a Judge of the European Courts of Human Rights.

PART 4

Miscellaneous

Section 30

Reports

This section provides for the annual report of the Commission to be provided to the Minister and laid before the Oireachtas. The section also provides that the report shall not disclose any information that might identify unsuccessful applicants or which may reveal the content or details of the Commission's deliberations.

Section 31

Substitution of Section 22 of Standards in Public Office Act 2001

This is a technical amendment of Section 22 of the Standards in Public Office Act 2001 which requires an applicant to possess a tax clearance certificate.

Section 32

Amendment of Courts Supplemental Provisions Act 1961 (as amended)

This section amends the Court Supplemental Provisions Act 1961 in order that barristers or solicitors must have 15 years, rather than 12 years, standing before they are appointed to the Superior Courts.

It also extends the retirement age of District Court Judges from 65 to 70 so that it is in line with the retirement age of all other domestic Judges. This will also ensure that District Judges who wish to remain on after the age of 65 do not have to seek an annual extension from the government in order for them to maintain office.

*Deputy Jim O'Callaghan,
Mean Fomhair, 2016.*