



AN BILLE UM CHOMHAIRLE NA MBREITHIÚNA, 2017
JUDICIAL COUNCIL BILL 2017

EXPLANATORY AND FINANCIAL MEMORANDUM

Purpose of the Bill

The purpose of this Bill is to establish a Judicial Council which will be independent in the performance of its functions and will promote and maintain excellence and high standards of conduct by judges. It will also provide a means of investigating allegations of judicial misconduct and, in this context, a Judicial Conduct Committee, which will have lay representation, will be established. Furthermore, it will facilitate the ongoing support and education of judges through a Judicial Studies Committee and through the establishment of Judicial Support Committees. A Sentencing Guidelines and Information Committee will prepare draft sentencing guidelines, while a Personal Injuries Guidelines Committee will prepare draft personal injuries guidelines.

Provisions of the Bill

PART 1

Preliminary and General

Short title and commencement

Section 1 contains standard citation and commencement provisions.

Definitions

Section 2 contains relevant definitions which are self-explanatory. Of particular importance is the definition of “judicial misconduct” which is relevant to the system for investigating complaints against judges, which is a central element of the Bill.

Repeals

Section 3 provides for the repeal of a number of provisions which are no longer required, for example, section 21 of the Courts of Justice (District Court) Act 1946 which provides for a judicial inquiry into the condition of health or conduct of a District Court judge.

Expenses

Section 4 contains a standard provision to the effect that expenses incurred in the administration of the Act shall be paid out of moneys provided by the Oireachtas.

PART 2

Judicial Council

Establishment day

Section 5 provides that the Minister shall, by order, appoint a day to be the establishment day for the purposes of the Act.

Establishment of Council

Section 6 provides for the establishment of a Judicial Council which shall, subject to the provisions of the Act, be independent in the performance of its functions.

Functions of Council

Section 7 sets out the functions of the Judicial Council which include promoting and maintaining excellence in the exercise by judges of their judicial functions and high standards of conduct among judges. Other functions concern promoting and maintaining the efficient and effective use of judicial resources, continuing education of judges, respect for judicial independence and public confidence in the administration of justice. The Council will have all the powers necessary for the performance of its functions, including the power to delegate some of those functions to a committee. Certain functions, such as the adoption of guidelines concerning judicial conduct and ethics, are reserved to the Council, as are the adoption of personal injuries guidelines and of sentencing guidelines.

Membership of Council

Section 8 provides that the Chief Justice shall be the chairperson of the Judicial Council, that the President of the Court of Appeal shall be its vice-chairperson and that the Council will comprise the entire judiciary.

Meetings and procedures of Council

Section 9 provides that the Judicial Council shall hold such and so many meetings as may be necessary for the performance of its functions but in each year shall hold at least one meeting, the first of which shall be held not later than three months after the establishment day. The section also deals with the quorum for a meeting, and with chairing and voting arrangements.

PART 3

Board and Committees of Council

Board of Council

Section 10 provides that there shall be a Board of the Council (the Board) which, subject to the Act, may regulate its own procedures. The election of the first elected members of the Board will take place at the first meeting of the Council.

Functions of Board

The functions which the Board shall perform, on behalf of the Council, are set out in *Section 11*. Those functions include determining policy in relation to the performance of the Council's functions, submitting proposals, recommendations or reports to the Council in relation to any of the functions of the Council, and reviewing draft guidelines concerning judicial conduct and ethics prepared by the Judicial Conduct Committee, draft personal injuries guidelines prepared by the Personal Injuries Guidelines Committee and draft sentencing guidelines prepared by the Sentencing Guidelines and Information Committee.

Membership of Board

Section 12 sets out the membership of the Board which will number eleven in total – the Chief Justice and the Presidents of each court, five elected members and one co-opted member.

Term of membership of Board

Section 13 sets out the duration of the term of membership of the Board which, in the case of an elected member, is a term of four years, renewable once.

Casual vacancies in membership of Board

Section 14 sets out how casual vacancies in the membership of the Board are to be filled.

Meetings and procedures of Board

Section 15 concerns the frequency of meetings of the Board (at least four during any one year), as well as the quorum for a meeting, and the chairing and voting arrangements.

Committees of Council

Section 16 provides that the Council may establish such and so many committees as it thinks fit to assist and advise it in the performance of its functions. This provision is in addition to the Committees which are separately provided for elsewhere in the Bill – a Judicial Studies Committee (Section 17), a Personal Injuries Guidelines Committee (Section 18), a Sentencing Guidelines and Information Committee (Section 23), Judicial Support Committees (Section 30) and the Judicial Conduct Committee (Section 43).

Judicial Studies Committee

Section 17 provides for the establishment of the Judicial Studies Committee by the Council, the function of which is to facilitate the continuing education and training of judges with regard to their judicial functions.

Personal Injuries Guidelines Committee

Section 18 provides for the establishment of the Personal Injuries Guidelines Committee by the Council, the function of which is to prepare draft general guidelines as to the level of damages that may be awarded or assessed in respect of personal injuries. The Committee is required to submit the first draft of personal injuries guidelines to the Council not later than 6 months after its establishment. It is required to review the guidelines every 3 years and to submit draft amendments to those guidelines where the review indicates that this is warranted.

Membership of Personal Injuries Guidelines Committee

Section 19 concerns the membership of the Personal Injuries Guidelines Committee which will consist of seven judges.

Term of membership of Personal Injuries Guidelines Committee

Section 20 sets out the duration of the term of membership of the Personal Injuries Guidelines Committee which is four years, renewable once.

Casual vacancies in membership of Personal Injuries Guidelines Committee

Section 21 deals with the process for filling casual vacancies arising on the Personal Injuries Guidelines Committee.

Meetings and procedures of Personal Injuries Guidelines Committee

Section 22 deals with the frequency of meetings of the Personal Injuries Guidelines Committee, as well as the quorum for a meeting (three members) and the chairing arrangements. The first meeting of the Committee will take place no later than one month after its establishment.

Sentencing Guidelines and Information Committee

Section 23 provides for the establishment of the Sentencing Guidelines and Information Committee by the Council, the functions of which include the preparation of draft sentencing guidelines, the monitoring of the operation of sentencing guidelines and the collation and dissemination of information on sentences imposed by the courts.

Membership of Sentencing Guidelines and Information Committee

Section 24 concerns the membership of the Sentencing Guidelines and Information Committee which will consist of eight judges and five lay members.

Recommendations for appointment of lay members of Sentencing Guidelines and Information Committee

Section 25 provides for the role of the Public Appointments Service in recommending persons who are suitable to be appointed as lay members of the Sentencing Guidelines and Information Committee.

Term of membership of Sentencing Guidelines and Information Committee

Section 26 sets out the duration of the term of membership of the Sentencing Guidelines and Information Committee which is four years, renewable once.

Casual vacancies in membership of Sentencing Guidelines and Information Committee

Section 27 deals with the process for filling casual vacancies arising on the Sentencing Guidelines and Information Committee.

Meetings and procedures of Sentencing Guidelines and Information Committee

Section 28 deals with the frequency of meetings of the Sentencing Guidelines and Information Committee, as well as the quorum for a meeting (five members of whom not fewer than three shall be judges and not fewer than two shall be lay members) and the chairing arrangements. The first meeting of the Committee will take place no later than one month after its establishment.

Sentencing policy review

Section 29 provides that, not later than 2 years after the section comes into operation, a review will commence of legislation which provides for the imposition of minimum sentences for offences. It also sets out the broad parameters for that review. A report on any findings of the review is to be made to the Oireachtas not later than 12 months after its commencement.

Judicial Support Committees

Section 30 provides for the establishment of Judicial Support Committees at all court levels by the Council. The function of a Judicial Support Committee shall be to advise and assist the Council in the performance of its functions under the Act insofar as matters relevant to the Court to which the Committee relates are concerned.

Remuneration and expenses of members of Board and committees

Section 31 concerns the payment of allowances for expenses to judges who are members of the Board or a committee (other than the Judicial Conduct Committee) and the payment of remuneration and allowances for expenses to lay members of committees other than the Judicial Conduct Committee.

PART 4

Staff, Funding and Accountability of Council

Secretary to Council

Section 32 provides for the appointment by the Board of the Secretary to the Council.

Interim Secretary to Council

Section 33 provides that the Chief Justice may appoint an interim Secretary to the Council pending the appointment of the Secretary.

Functions of Secretary to Council

Section 34 sets out the functions of the Secretary which, in addition to other functions assigned under the Act, include the management and control of the staff of the Council and the administration of the Council and its committees.

Staff of Council

Section 35 concerns the appointment of staff of the Council.

Advances to Council

Section 36 concerns the provision of moneys to enable the Council perform its functions.

Annual report of Council

Section 37 provides that the Council shall provide an annual report to the Minister for Justice and Equality of its activities, which the Minister shall cause to be laid before each House of the Oireachtas.

Accounts of Council

Section 38 concerns the keeping of accounts by the Council.

Accountability of Council to Public Accounts Committee

Section 39 concerns the giving of evidence by the Secretary to the Council to the Public Accounts Committee on specified matters.

Accountability of Council to other Oireachtas committees

Section 40 concerns the attendance by the Secretary before an Oireachtas committee other than the Public Accounts Committee (see section 39), or the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann, or a sub-committee of those Committees. By virtue of this section the Secretary will be required to account for the general administration of the Council but will not be required to account for matters such as the exercise by a judge of his or her judicial functions.

Prohibition on disclosure of confidential information

Section 41 contains a standard provision imposing an obligation on a person not to disclose confidential information obtained while performing specific functions as, for example, a member of a committee of the Council. Unauthorised disclosure is an offence which, on summary conviction, carries with it a penalty of a class A fine, i.e., a fine not exceeding €5,000.

PART 5

Judicial Conduct Committee

Chapter 1

Application of Part

Application of Part

Section 42 concerns the application of this Part of the Act which, in general terms, applies to judicial misconduct alleged to have occurred after the commencement of this Part.

Chapter 2

Judicial Conduct Committee

Judicial Conduct Committee

Section 43 provides for the establishment of a Judicial Conduct Committee which, subject to the Act, shall be independent in the performance of its function to promote and maintain high standards of judicial conduct. The Committee will have a central role in considering complaints against judges and referring them either for resolution by informal means, or for formal investigation. It will also be responsible for drafting guidelines concerning judicial conduct and ethics.

Membership of Judicial Conduct Committee

Section 44 concerns the membership of the Judicial Conduct Committee which will consist of eight judges and five lay members.

Recommendations for appointment of lay members of Judicial Conduct Committee

Section 45 provides for the role of the Public Appointments Service in recommending persons who are suitable to be appointed as lay members of the Judicial Conduct Committee.

Term of membership of Judicial Conduct Committee

Section 46 sets out the duration of the term of membership of the Judicial Conduct Committee which, in the case of elected judges and lay members, is four years, renewable once.

Casual vacancies in membership of Judicial Conduct Committee

Section 47 deals with the process for filling casual vacancies arising on the Judicial Conduct Committee.

Meetings and procedures of Judicial Conduct Committee

Section 48 deals with the frequency of meetings of the Judicial Conduct Committee, as well as the quorum for a meeting (five members of whom not fewer than three shall be judges and not fewer than two shall be lay members) and the chairing and voting arrangements.

Registrar to Judicial Conduct Committee

Section 49 provides for the Secretary, or another member of staff who is designated under section 34(5) to perform the functions of the Secretary, to act as Registrar to the Judicial Conduct Committee.

Chapter 3

Complaints

Complaints

Section 50 sets out the circumstances in which a complaint about alleged judicial misconduct can be made to the Registrar. Essentially that complaint may be made by any person who is directly affected by, or who witnessed, the alleged misconduct.

Time limit for making complaints

Section 51 sets out the time limit of three months within which a complaint may be made to the Registrar concerning the conduct of a judge which is alleged to constitute judicial misconduct. Provision is made for the time limit to be extended in appropriate circumstances.

Procedures of Judicial Conduct Committee relating to complaints or matters relating to judicial conduct

Section 52 concerns the specification by the Judicial Conduct Committee of procedures relating to the making and investigation of complaints, the making of determinations by it regarding complaints and the publication of its procedures.

Admissibility of complaints

Section 53 concerns the criteria for determining if a complaint is admissible. For example, it must be made by the appropriate person and it must not be frivolous or vexatious. It must also be the case that the conduct alleged could, if substantiated, constitute judicial misconduct by the judge concerned. Complaints relating to the merits of a decision in proceedings before a judge are not admissible. Where a complaint is admissible it is referred to the Judicial Conduct Committee.

Notification following determination of whether or not complaint is admissible

Section 54 provides for notification of the judge and of the complainant where a complaint is determined to be admissible or inadmissible.

Complaints Review Committee

Section 55 concerns the Complaints Review Committee whose purpose it is to review determinations that complaints are inadmissible. The Committee will comprise three members (two judges and one lay member) appointed by the Judicial Conduct Committee, all of whom will be members of that Committee.

Review of determination that complaint, or part of complaint, is inadmissible

Section 56 sets out the procedures to apply where a review is undertaken by the Complaints Review Committee of a determination that a complaint is inadmissible. A complainant has thirty days from the date of receiving the initial notification of that determination within which to seek a review.

Withdrawal of complaint under consideration by Registrar or Complaints Review Committee

Section 57 sets out the procedures to apply where a complaint which is being considered by the Registrar, or by the Complaints Review Committee, is withdrawn. In such circumstances it may be that no further action is taken. However, it is also possible to refer the matter to the Judicial Conduct Committee for a decision under section 59 as to whether or not to initiate an investigation in relation to the matter.

If judge concerned consents to reprimand by Judicial Conduct Committee before complaint is investigated

Section 58 sets out the procedures to apply if the judge who is the subject of the complaint consents to the issuing of a reprimand to him or her by the Judicial Conduct Committee before the complaint concerned is investigated. A reprimand in these circumstances may provide for the issuing of advice to the judge concerned, for the making of a recommendation that the judge concerned pursue a specified course of action, including attending a course or training of a specified type, and for the issuing of an admonishment to the judge concerned.

Investigations of judicial misconduct in absence of, or after withdrawal of, complaint

Section 59 allows for the possibility that an investigation into judicial misconduct may take place in the absence of a complaint, or where the complaint concerned is withdrawn, provided that the conditions set out in that section are satisfied.

Referral of complaint for resolution by informal means or investigation

Section 60 allows the Judicial Conduct Committee to refer a complaint for resolution by informal means or for investigation by a panel of inquiry.

Chapter 4

Resolution of complaints by informal means

Referral of complaint for resolution by informal means

Section 61 provides that the resolution of a complaint by informal means shall be undertaken by a designated judge or designated judges.

Resolution of complaints by informal means

Section 62 deals with some of the matters which are relevant when an attempt is made to resolve a complaint by informal means.

Report to Judicial Conduct Committee from designated judge or designated judges

Section 63 allows for the submission of reports to the Judicial Conduct Committee both where the complaint is deemed not suitable for resolution by informal means (in which case it is referred to a panel of inquiry), and where the complaint has been resolved by informal means. A report is also to be made where the complaint was not so resolved.

Chapter 5

Investigation of complaints

Referral of complaint by Judicial Conduct Committee to panel of inquiry

Section 64 concerns the appointment of a panel of inquiry to investigate a complaint and sets out the information to be provided to the judge and to the complainant consequent upon that appointment.

Recommendations for nomination of lay members of panel of inquiry

Section 65 provides for the role of the Public Appointments Service in recommending persons who are suitable to be appointed as lay members of panels of inquiry.

Nomination for appointment of lay members of panels of inquiry

Section 66 sets out the procedures for nominating lay members for appointment to panels of inquiry and the eligibility criteria for lay membership of such panels. It also provides for the Government to nominate not fewer than seven persons and not more than twelve persons to be lay members of panels of inquiry.

Appointment of members of panel of inquiry

Section 67 specifies that the Judicial Conduct Committee is to appoint three persons to be members of a panel of inquiry (two judges and one lay member). It also sets out the arrangements which will apply if a member resigns or otherwise ceases to be a member of a panel of inquiry.

Conduct of investigation

Section 68 relates to the conduct of the investigation by a panel of inquiry and concerns matters such as the obtaining of documents, the holding of hearings, etc.

Powers and protections relating to witnesses and evidence

Section 69 concerns the powers, rights and privileges of a panel of inquiry in relation to the examination of witnesses, compelling the production of records and the giving of evidence. It also specifies that a person who does not cooperate with a panel of inquiry is guilty of an offence.

Failure or refusal by complainant to cooperate with panel of inquiry

Section 70 deals with the consequences of a refusal or failure on the part of a complainant to cooperate with a panel of inquiry. In such cases the Judicial Conduct Committee may direct that the investigation be discontinued, but it may also direct that it be proceeded with.

Failure or refusal by judge concerned to cooperate with panel of inquiry

Section 71 deals with the consequences of a refusal or failure on the part of the judge concerned to cooperate with a panel of inquiry, and provides for the possibility that a reprimand may be issued to the judge concerned in respect of the refusal to cooperate. The possibility to make such other recommendations as are specified in the section is also provided for.

Matter before panel of inquiry concerning health of judge

Section 72 concerns the consequences of a panel of inquiry forming the view that the conduct which is the subject of the complaint under investigation may be related to the health of the judge concerned. It allows for the possibility that the judge concerned may take remedial measures. It also allows for a recommendation to issue to the judge about the need to seek medical assistance.

If judge concerned consents to reprimand by Judicial Conduct Committee before conclusion of investigation

Section 73 concerns the consequences if the judge concerned consents to the issuing of a reprimand to him or her by the Judicial Conduct Committee before or during the investigation of a complaint by a panel of inquiry. In such circumstances the investigation may be adjourned and a report in relation to the complaint submitted to the Judicial Conduct Committee.

Withdrawal of complaint while it is being investigated by panel of inquiry

Section 74 concerns the consequences if a complaint which is being investigated by a panel of inquiry is withdrawn. It may be that no further action will be taken, or that the investigation continues.

Adjournment of investigation of complaint by panel of inquiry

Section 75 gives a panel of inquiry the power to adjourn an investigation of a complaint if it appears to it appropriate to do so.

Report of panel of inquiry submitted to Judicial Conduct Committee

Section 76 concerns the submission, on completion of an investigation of a complaint by a panel of inquiry, of its written report to the Judicial Conduct Committee setting out its findings. It specifies the content of the report and the nature of recommendations which may be made. For example, a recommendation may be to the effect that the judge concerned pursue a specified course of action, including attending a course or training of a specified type, or it may involve the issuing of an admonishment to the judge concerned.

Draft report to be sent to complainant and judge concerned

Section 77 provides that any draft report of a panel of inquiry shall be sent to the complainant and the judge concerned prior to its submission to the Judicial Conduct Committee, and for the making of submissions or requests to the panel of inquiry in relation to the non-observance of fair procedures.

Amendment of draft report

Section 78 provides that where the complainant or the judge concerned submits a statement in writing requesting a panel of inquiry to review a draft report in the circumstances set out in the section, the panel may amend the draft report to take account of the statement received, or decline to make any amendments to the draft report.

Determination of complaint by Judicial Conduct Committee

Section 79 concerns the procedure to be followed by the Judicial Conduct Committee on foot of the receipt by it of a report from a panel of inquiry. It allows for submissions to be made by the complainant or judge to the Committee in relation to the recommendations that are included in the report of the panel of inquiry. Where necessary the Committee may hold a hearing in relation to the complaint which has been investigated by a panel of inquiry to assist it in arriving at a determination regarding the complaint. In this regard the Committee may accept, with or without modification, any recommendation contained in the report submitted by a panel of inquiry. It may also reject a recommendation. Where the Committee requires the judge concerned to take any action, for instance to attend a course or training, the Committee may require the judge concerned to report to it regarding his or her compliance with the requirement.

Referral by Judicial Conduct Committee to Minister of matter relating to conduct or capacity of judge for Article 35.4 purposes

Section 80 sets out the procedures to be followed in the event that a matter relating to the conduct or capacity of a judge requires the referral of the matter to the Minister for Justice and Equality for the proposal by the Minister of an Article 35.4.1^o motion in respect of the judge concerned.

Chapter 6

Miscellaneous provisions relating to Judicial Conduct Committee and panels of inquiry

Evidence given not admissible in certain proceedings

Section 81 provides that evidence given to the Judicial Conduct Committee or a panel of inquiry is not admissible in criminal or other proceedings except in certain limited circumstances.

Conduct of proceedings

Section 82 provides that, as a general principle, all proceedings relating to the investigation of complaints and related court proceedings shall be conducted otherwise than in public, and makes related provisions concerning the disclosing of evidence.

Duty to disclose substance of evidence to other witnesses, etc.

Section 83 concerns the disclosure of evidence by a panel of inquiry to witnesses and to those about whom evidence is given to a panel of inquiry.

Privileges and immunities of witnesses

Section 84 concerns the immunities, privileges and liabilities of a witness before a panel of inquiry, which are the same as apply to a witness in proceedings in the High Court.

Remuneration and expenses of members of Judicial Conduct Committee and panel of inquiry

Section 85 concerns the allowance for expenses and, where appropriate, the remuneration, of members of the Judicial Conduct Committee or of a panel of inquiry.

Expenses of witnesses

Section 86 provides for the payment of reasonable expenses of a complainant or witness who appears before a panel of inquiry or a hearing of the Judicial Conduct Committee.

Annual report of Judicial Conduct Committee

Section 87 provides that the Judicial Conduct Committee shall provide an annual report to the Minister for Justice and Equality of its activities, which the Minister shall cause to be laid before each House of the Oireachtas. It also specifies some of the statistical data which are to be contained in that report.

Costs of legal representation

Section 88 provides for the possible recovery of legal costs reasonably incurred by a judge where a complaint has been made and where the determination of the Judicial Conduct Committee is to the effect that the complaint has not been substantiated.

PART 6

Miscellaneous

Power of Oireachtas to remove judge from office unaffected

Section 89 provides that nothing in this Act shall affect the operation of section 4 of Article 35 of the Constitution.

Personal injuries guidelines

Section 90 sets out the broad parameters for the personal injuries guidelines which are to be adopted by Council. Provision is made for various factors which are to be taken into account both by the Committee and by the Board in preparing or reviewing drafts of such guidelines. Among other matters these include the level of damages awarded for personal injuries by courts in the State and courts outside the State as well as the need to promote consistency in the level of damages awarded for personal injuries.

Sentencing guidelines

Section 91 sets out the broad parameters for the sentencing guidelines which are to be adopted by Council. Provision is made for various factors which are to be taken into account both by the Committee and by the Board in preparing or reviewing drafts of such guidelines. These include matters

such as the sentences imposed by the courts, the impact of decisions of the courts relating to sentences on the victims of offences and the need to promote public confidence in the system of criminal justice.

Courts to have regard to sentencing guidelines

Section 92 specifies that a court shall, in imposing a sentence, have regard to sentencing guidelines relevant to the proceedings before it, unless the court is satisfied that to do so would be contrary to the interests of justice. A court which departs from those guidelines is required to state the reasons for such departure in giving its decision.

Independence of court and judicial functions

Section 93 provides that nothing in this Act shall be construed as to interfere with the performance by the courts of their functions or the exercise by judges of their judicial functions.

Restriction of Freedom of Information Act 2014

Section 94 concerns the restriction of the application of the Freedom of Information Act 2014 to certain records – essentially records held by the Judicial Conduct Committee, the Registrar, etc., in the context of investigating a complaint.

Restrictions of rights and obligations under Data Protection Regulation

Section 95 concerns the General Data Protection Regulation. Certain rights under the Regulation are restricted in relation to the investigation of complaints under Part 5 of the Act.

Notification to Courts Service of decisions made and actions taken by Council

Section 96 provides for the Judicial Council to notify the Courts Service of decisions made or actions taken concerning the performance of the functions of the Courts Service.

Amendment of Courts Service Act 1998

Section 97 provides for the amendment of the Courts Service Act 1998 to take account of section 96 of this Act.

Amendment of Personal Injuries Assessment Board Act 2003

Section 98 amends the Personal Injuries Assessment Board Act 2003 so as to remove from the Board the responsibility which it currently has for preparing and reviewing the Book of Quantum.

Amendment of section 22 of Civil Liability and Courts Act 2004

Section 99 amends the Civil Liability and Courts Act 2004 to replace references to the Book of Quantum to which the courts shall have regard by references to the personal injuries guidelines. A court which departs from those guidelines is required to state the reasons for such departure in giving its decision.

Financial implications

It is envisaged that expenditure of the order of €2.8m could be incurred during the first year of establishment of the Judicial Council, with expenditure of approximately €1.7m per annum being incurred thereafter.

An Roinn Dlí agus Cirt agus Comhionannais

Iúil, 2017.

