



**SEANAD ÉIREANN**

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

**LEASUITHE COISTE  
COMMITTEE AMENDMENTS**

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# SEANAD ÉIREANN

## AN BILLE UM CHOMHAIRLE NA MBREITHIÚNA, 2017 —AN COISTE

### JUDICIAL COUNCIL BILL 2017 —COMMITTEE STAGE

#### *Leasuithe Amendments*

*\*Government amendments are denoted by an asterisk*

#### SECTION 2

1. In page 7, line 22, to delete “Sentencing Information Committee” and substitute “Sentencing Information and Guidelines Committee”.

—*Senator Niall Ó Donnghaile.*

- \*2. In page 7, line 22, after “Sentencing” to insert “Guidelines and”.

- \*3. In page 9, after line 37, to insert the following:

“(a) in relation to the Sentencing Guidelines and Information Committee, a person appointed under *section 19(3)* to be a lay member of that Committee.”.

- \*4. In page 10, between lines 14 and 15, to insert the following:

“ “sentence” includes any order or decision of a court consequent on a conviction for an offence or a finding of guilt in respect of an offence;

“sentencing guidelines” shall be construed in accordance with *section 75*;”.

5. In page 10, line 15, to delete “Sentencing Information Committee” and substitute “Sentencing Information and Guidelines Committee”.

—*Senator Niall Ó Donnghaile.*

- \*6. In page 10, line 15, after “ “Sentencing” to insert “Guidelines and”.

#### SECTION 7

- \*7. In page 12, line 3, to delete “adopt” and substitute “adopt and publish in such manner as it considers appropriate”.

- \*8. In page 12, between lines 14 and 15, to insert the following:

“(g) adopt and publish in such manner as it considers appropriate—

- (i) sentencing guidelines prepared and submitted to the Board by the Sentencing Guidelines and Information Committee under *section 18(2)(a)* with the modifications (if any) made by the Board under *section 11(1)(d)*, or
- (ii) amendments to sentencing guidelines so prepared and submitted under *section 18(2)(b)* with the modifications (if any) made by the Board under

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*section 11(1)(d),*

as soon as practicable, and in any event not later than 12 months, after such submission.”.

9. In page 12, between lines 22 and 23, to insert the following:

- “(i) develop guidelines for appropriate general damages for various types of personal injury,
- (j) review the guidelines referred to in *paragraph (i)* at least once every 3 years and if appropriate alter those guidelines,
- (k) avail of, if it deems appropriate, assistance from the Personal Injuries Assessment Board in developing the guidelines referred to in *paragraph (i)* and in reviewing the guidelines referred to in *paragraph (j)*,
- (l) develop and manage schemes for the education and training of judges on general damages for various types of personal injury and the guidelines referred to in *paragraph (i)*,
- (m) prepare and disseminate information and materials among judges for their use on the exercise of their functions with regard to general damages for various types of personal injury,
- (n) subject to *section 19#*, promote an understanding of the general damages for various types of personal injury among judges and persons other than judges in such manner as it considers appropriate.”.

—*Senator Lorraine Clifford-Lee.*

[#This is the appropriate reference if amendment No. 45 is accepted.]

\*10. In page 12, line 31, to delete “*paragraphs (a) to (d)*” and substitute “*paragraphs (a) to (d) and paragraph (g)#*”.

[#This is the appropriate reference if amendment No. 8 is accepted.]

SECTION 11

\*11. In page 14, between lines 24 and 25, to insert the following:

- “(d) shall review—
  - (i) draft sentencing guidelines prepared by the Sentencing Guidelines and Information Committee and submitted by it to the Board under *section 18(2)(a)*, and
  - (ii) draft amendments to sentencing guidelines prepared by that Committee and submitted by it to the Board under *section 18(2)(b)*,and may make such modifications to those draft guidelines, or draft amendments to such guidelines, as it considers appropriate.”.

12. In page 14, between lines 24 and 25, to insert the following:

- “(d) may of its own volition submit a proposal, report or recommendation to the Council in relation to the level of general damages for various types of personal

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injury and shall do so upon request from the Council in relation to the level of general damages for various types of personal injury.”.

—*Senator Lorraine Clifford-Lee.*

SECTION 16

**13.** In page 18, line 11, to delete “*sections 17, 18, 19*” and substitute “*sections 17, 18, 19, 20*”.

—*Senator Lorraine Clifford-Lee.*

**\*14.** In page 18, line 34, after “to” to insert “the Sentencing Guidelines and Information Committee or”.

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**\*15.** In page 19, to delete lines 8 to 10 and substitute the following:

“(c) provide, or assist in the provision of, education and training on matters relevant to the exercise by judges of their functions, including but not limited to—

(i) dealing with persons in respect of whom it is alleged an offence has been committed,

(ii) European Union law and international law,

(iii) human rights and equality law,

(iv) information technology, and

(v) the assessment of damages in personal injury actions,

and”.

SECTION 18

**16.** In page 19, lines 16 and 17, to delete “Sentencing Information Committee” and substitute “Sentencing Information and Guidelines Committee”.

—*Senator Niall Ó Donnghaile.*

**\*17.** In page 19, line 16, after “Sentencing” to insert “Guidelines and”.

**18.** In page 19, to delete lines 18 to 23 and substitute the following:

“(2) The function of the Sentencing Information and Guidelines Committee shall be to—

(a) prepare sentencing guidelines relating to the sentencing of criminal offenders, subject to *section 19*#,

(b) collate, in such manner as it considers appropriate, information on sentences imposed by the courts, and

(c) disseminate that information from time to time to judges and persons other than judges.”.

—*Senator Niall Ó Donnghaile.*

[#This is the appropriate reference if amendment No. 39 is accepted.]

[SECTION 18]

- \*19. In page 19, line 19, to delete “function” and substitute “functions”.
- \*20. In page 19, line 19, after “Sentencing” to insert “Guidelines and”.
- \*21. In page 19, between lines 19 and 20, to insert the following:
- “(a) prepare and submit to the Board for its review draft sentencing guidelines,
  - (b) prepare and submit to the Board for its review draft amendments to sentencing guidelines adopted by the Council,”.
22. In page 19, line 24, to delete “Sentencing Information Committee” and substitute “Sentencing Information and Guidelines Committee”.

—*Senator Niall Ó Donnghaile.*

- \*23. In page 19, line 24, after “Sentencing” to insert “Guidelines and”.
- \*24. In page 19, line 25, to delete “function” and substitute “functions”.
25. In page 19, lines 29 and 30, to delete “Sentencing Information Committee” and substitute “Sentencing Information and Guidelines Committee”.

—*Senator Niall Ó Donnghaile.*

- \*26. In page 19, line 29, after “Sentencing” to insert “Guidelines and”.
- \*27. In page 19, between lines 30 and 31, to insert the following:
- “(a) consult with such persons as the Committee considers appropriate for the purpose of preparing draft sentencing guidelines, or draft amendments to sentencing guidelines, for adoption by the Council,”.

28. In page 19, to delete lines 31 to 36 and substitute the following:
- “(a) to prepare sentencing guidelines relating to the sentencing of criminal offenders,
  - (b) collate information on decisions of the courts relating to sentences,
  - (c) conduct research on sentences imposed by the courts,
  - (d) disseminate decisions of the courts relating to sentences,
  - (e) prepare and disseminate information on such decisions and other materials relevant to its function, and
  - (f) organise conferences, seminars and meetings relevant to its function.”.

—*Senator Niall Ó Donnghaile.*

[SECTION 18]

\*29. In page 19, line 35, to delete “function” and substitute “functions”.

\*30. In page 19, line 36, to delete “function” and substitute “functions”.

\*31. In page 20, between lines 16 and 17, to insert the following:

“(8) The Sentencing Guidelines and Information Committee shall prepare and submit to the Council, for inclusion in the annual report of the Council under *section 25*, a report in writing of the activities of the Committee during the period to which the annual report relates.”.

\*32. In page 20, to delete lines 17 to 22 and substitute the following:

“(9)# In this section references to information shall include references to information in electronic or other forms.”.

*[#This is the appropriate reference if amendment No. 31 is accepted.]*

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\*33. In page 20, between lines 22 and 23, to insert the following:

**“Membership of Sentencing Guidelines and Information Committee**

**19.** (1) The Sentencing Guidelines and Information Committee shall comprise the following 13 members:

(a) 8 judges nominated by the Chief Justice, including—

(i) a judge of the Supreme Court,

(ii) a judge of the Court of Appeal,

(iii) a judge of the High Court,

(iv) a judge of the Circuit Court, and

(v) a judge of the District Court;

(b) the lay members appointed under *subsection (3)*.

(2) The Chief Justice shall appoint one of the judges nominated under *subsection (1)(a)* to be a member of the Sentencing Guidelines and Information Committee to act as chairperson of the Committee.

(3) The Government shall appoint 5 persons to be members of the Sentencing Guidelines and Information Committee (in this Act referred to as “lay members” of the Sentencing Guidelines and Information Committee) from among such persons as are recommended by the Public Appointments Service in accordance with *section 20* for appointment as such lay members.

(4) *Subsection (6) of section 31*, but only insofar as it relates to *paragraphs (a) to (e)* of that subsection, shall apply to the eligibility of a person for appointment to be a lay member of the Sentencing Guidelines and Information Committee as that subsection applies to the eligibility of a person for appointment to be a lay member of the Judicial Conduct Committee with the modification that the reference to a lay member of the Judicial Conduct Committee shall be construed as a reference to a lay member

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of the Sentencing Guidelines and Information Committee.

- (5) *Subsection (7) of section 31*, but only insofar as it relates to *paragraphs (a) to (f)* of that subsection, shall apply to the cesser of membership of a lay member of the Sentencing Guidelines and Information Committee as that subsection applies to the cesser of membership of a lay member of the Judicial Conduct Committee with the modification that the reference to a lay member of the Judicial Conduct Committee shall be construed as a reference to a lay member of the Sentencing Guidelines and Information Committee.
- (6) Of the lay members appointed to the Sentencing Guidelines and Information Committee, not fewer than 40 per cent of them shall be women.”.

\*34. In page 20, between lines 22 and 23, to insert the following:

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

- 20.** (1) The Government shall request the Public Appointments Service to undertake a selection process for the purpose of identifying and recommending to the Government persons who it is satisfied are suitable for appointment to be lay members of the Sentencing Guidelines and Information Committee and, accordingly, the Public Appointments Service shall comply with that request and, following the conduct of such a selection process, make a recommendation to the Government in respect of persons who participated in such process in relation to whom it is so satisfied.
- (2) Subject to *subsection (3)* and *section 19(4)*, the Minister shall agree with the Public Appointments Service the selection criteria and procedures that are to apply to a selection process under this section.
  - (3) For the purposes of making a recommendation under this section, the Public Appointments Service shall have regard to the desirability that the lay members of the Sentencing Guidelines and Information Committee will, among them, possess knowledge of, and experience in, as many as possible of the following matters:
    - (a) the prosecution of criminal proceedings;
    - (b) the defence of criminal proceedings;
    - (c) policing;
    - (d) the administration of justice;
    - (e) sentencing policy;
    - (f) the promotion of the welfare of the victims of crime;
    - (g) academic study or research relating to criminal law or criminology;
    - (h) the use of statistics;
    - (i) the rehabilitation of offenders.
  - (4) Subject to *subsection (3)*, the Public Appointments Service shall not make a recommendation under this section in respect of a person unless it is satisfied that the



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person possesses such relevant experience, qualifications, training or expertise as is appropriate having regard to the functions of the Sentencing Guidelines and Information Committee as would render him or her suitable to be a lay member of the Sentencing Guidelines and Information Committee.

- (5) The Public Appointments Service shall provide the Government with particulars of the experience, qualifications, training and expertise of each person in respect of whom it makes a recommendation under this section.
- (6) This section shall, with any necessary modifications, apply in relation to the filling of any vacancy that arises in the lay membership of the Sentencing Guidelines and Information Committee.”.

\*35. In page 20, between lines 22 and 23, to insert the following:

**“Term of membership of Sentencing Guidelines and Information Committee**

21. (1) Subject to *section 22(3)*, each member of the Sentencing Guidelines and Information Committee shall continue to be a member of the Committee for a term of 4 years from the date of his or her nomination or appointment, as the case may be, unless he or she sooner dies, resigns, becomes ineligible for membership or, in the case of a lay member, is removed from membership of the Committee.
- (2) Subject to *subsection (3)*, a member of the Sentencing Guidelines and Information Committee whose term of membership expires with the passage of time shall be eligible for re-nomination or re-appointment as a member of the Committee for a further term of 4 years.
- (3) A member of the Sentencing Guidelines and Information Committee who has served 2 terms as a member of that Committee shall not be eligible for re-nomination or re-appointment, as the case may be, as a member of the Committee.
- (4) A member of the Sentencing Guidelines and Information Committee who is a judge may resign from that Committee by notice in writing given or sent to the chairperson of the Committee and the resignation shall take effect on the day on which the chairperson receives the notice.
- (5) A lay member of the Sentencing Guidelines and Information Committee may resign from that Committee by notice in writing given or sent to the Minister and the resignation shall take effect on the day on which the Minister receives the notice.
- (6) The lay member of the Sentencing Guidelines and Information Committee concerned shall give or send a copy of the notice under *subsection (5)* to the chairperson of the Sentencing Guidelines and Information Committee when he or she gives or sends the notice to the Minister or as soon as practicable thereafter.
- (7) Where a member of the Sentencing Guidelines and Information Committee who is a judge ceases to be a judge, he or she shall thereupon cease to be a member of the Committee.
- (8) The Government may at any time remove from the Sentencing Guidelines and Information Committee a lay member of the Committee if the Government is satisfied

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that the lay member—

- (a) has become incapable through ill health of effectively performing the functions of the office,
  - (b) has committed stated misbehaviour,
  - (c) has a conflict of interest of such significance that he or she should cease to hold office, or
  - (d) is otherwise unfit to hold office or unable to discharge the functions of the office.
- (9) The Sentencing Guidelines and Information Committee may act notwithstanding any vacancy in its membership provided there are not less than—
- (a) 4 members of the Committee who are judges, and
  - (b) 3 lay members of the Committee.”.

\*36. In page 20, between lines 22 and 23, to insert the following:

**“Casual vacancies in membership of Sentencing Guidelines and Information Committee**

22. (1) Where a member of the Sentencing Guidelines and Information Committee who is a judge dies, retires or resigns from judicial office or resigns from the Sentencing Guidelines and Information Committee in accordance with *subsection (4) of section 21* or ceases to be a member of that Committee under *subsection (7) of that section*, the vacancy so occasioned shall be filled by a judge nominated by the Chief Justice to be a member of the Sentencing Guidelines and Information Committee.
- (2) Where a lay member of the Sentencing Guidelines and Information Committee dies, resigns from the Sentencing Guidelines and Information Committee in accordance with *section 21(5)*, ceases to be a member of the Committee under *section 19(5)* or is removed from that Committee under *section 21(8)*, the vacancy so occasioned shall be filled by a person appointed to be a lay member of the Sentencing Guidelines and Information Committee in the same manner as the member of the Committee who occasioned the vacancy was appointed.
- (3) The term of office of a member of the Sentencing Guidelines and Information Committee nominated in accordance with *subsection (1)*, or appointed in accordance with *subsection (2)*, shall be for the unexpired period of the term of membership of the member of the Committee whom he or she has replaced.
- (4) A term of membership of the Sentencing Guidelines and Information Committee of any duration resulting from a nomination in accordance with *subsection (1)*, or an appointment in accordance with *subsection (2)*, shall be regarded as a term of membership for the purposes of *section 21(3)*.”.

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\*37. In page 20, between lines 22 and 23, to insert the following:

**“Meetings and procedures of Sentencing Guidelines and Information Committee**

23. (1) The Sentencing Guidelines and Information Committee shall hold such and so many meetings as may be necessary for the performance of its functions.
- (2) The first meeting of the Sentencing Guidelines and Information Committee shall be held not later than 3 months after the date of the first meeting of the Council.
- (3) At a meeting of the Sentencing Guidelines and Information Committee—
- (a) the chairperson of that Committee shall, if present, be the chairperson of the meeting, or
- (b) if and so long as the chairperson of that Committee is not present, the next most senior judge present shall be the chairperson of the meeting.
- (4) The quorum for a meeting of the Sentencing Guidelines and Information Committee shall be 5, of whom—
- (a) not fewer than 3 shall be members of the Committee who are judges, and
- (b) not fewer than 2 shall be lay members of the Committee.
- (5) Subject to this Act, the Sentencing Guidelines and Information Committee shall regulate its own procedures.”.

38. In page 20, between lines 22 and 23, to insert the following:

**“Membership of Sentencing Information and Guidelines Committee**

19. (1) Subject to this section, the Sentencing Information and Guidelines Committee 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”).
- (2) In appointing the members of the Sentencing Information and Guidelines Committee 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.
- (3) The members of the Sentencing Information and Guidelines Committee shall elect a judicial member to be the Chairperson of the Sentencing Council and shall elect another judicial member to chair the Sentencing Information and Guidelines Committee 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,

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- (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 Committee in accordance with *subsection (8)*.
- (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.
- (8) In making recommendations of persons who are suitable for appointment as non judicial members of the Committee under this section, the Public Appointment Service will have regard to the desirability of the members of the Committee possessing knowledge of, and experience in, matters connected to one or more of the following:
- (a) criminal defence;
  - (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;
  - (g) the use of statistics;
  - (h) the rehabilitation of offenders.
- (9) The Chief Justice shall have the title of President of the Sentencing Information and Guidelines Committee but shall not be a member of the Committee.
- (10) The Government may appoint a person who has experience of sentencing policy to attend and speak at any meeting of the Committee.
- (11) The Government may by order, in accordance with *section 3*, make provision—
- (a) as to the term of office, resignation and re-appointment of judicial members and non-judicial members,
  - (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.”.

—*Senator Niall Ó Donnghaile.*

39. In page 20, between lines 22 and 23, to insert the following:

**“Sentencing Guidelines**

19. (1) A sentencing guideline prepared by the Sentencing Information and Guidelines Committee in accordance with *section 18(1)* may be general in nature or limited to a particular offence, particular category of offence or a particular category of offender.
- (2) Where the Committee 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:
- (a) the Judicial Council;
  - (b) The Chief Justice;
  - (c) the Government;
  - (d) the Oireachtas Committee on Justice and Equality; and
  - (e) any other persons or group that the Committee, Chief Justice or Government agree is appropriate.
- (3) Following the consultation process in accordance with *subsection (3)*, the Committee shall make any amendments to the guidelines that it considers appropriate and issue the guidelines as definitive guidelines.
- (4) The Committee may, from time to time, review the sentencing guidelines, issued under this section, and revise them.
- (5) When exercising its functions under this section, the Committee shall have regard to the following:
- (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;
  - (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 reoffending; and
  - (h) the results of the monitoring carried out under section 12.

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- (6) In having regard to *section 7(5)(b)* the Committee shall make recommendations to the Government on any legislative changes it considers appropriate.”

—*Senator Niall Ó Donnghaile.*

40. In page 20, between lines 22 and 23, to insert the following:

**“Sentencing Ranges**

19. (1) When exercising its functions under *section 19#*, the Sentencing Information and Guidelines Committee 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, 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 caused, by the offence;
  - (c) such other factors as the Committee 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 Committee, 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 Committee, 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—
- (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—
- (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 Committee considers are relevant to such a consideration,

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- (b) list any other mitigating factors which the Committee 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 Committee considers to be of particular significance in relation to the offence or the offender.
- (6) The provision made in accordance with *subsections (2) to (5)* may differ for different circumstances or cases involving the offence.”.

—Senator Niall Ó Donnghaile.

[#This is the appropriate reference if amendment No. 39 is accepted.]

41. In page 20, between lines 22 and 23, to insert the following:

**“Proposals by the Minister or Court of Appeal**

19. (1) The Minister may propose to the Sentencing Information and Guidelines Committee that sentencing guidelines, prepared under *section 19#* be prepared or revised by the Committee under *section 7*—
- (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 Committee that sentencing guidelines be prepared or revised by the Committee under *section 7*—
- (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 judgement in the appeal.
- (4) If the Committee 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 judgement of the court.”.

—Senator Niall Ó Donnghaile.

[#This is the appropriate reference if amendment No. 39 is accepted.]

42. In page 20, between lines 22 and 23, to insert the following:

**“Duty of court**

19. Every court—
- (a) must, in sentencing an offender, follow any sentencing guidelines, under *section 20*, which are relevant to the offender’s case, and

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- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines, under *section 20*, which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”.

—*Senator Niall Ó Donnghaile.*

43. In page 20, between lines 22 and 23, to insert the following:

**“Monitoring of Sentencing Guidelines**

19. (1) The Sentencing Information and Guidelines Committee must—

- (a) monitor the operation and effect of its sentencing guidelines, under *section 19#*, and
  - (b) consider what conclusions can be drawn from the information obtained by virtue of *paragraph (a)*.
- (2) Committee 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,
  - (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 Committee must include—
- (a) a summary of the information obtained under *subsection (1)(a)*, and
  - (b) a report of any conclusions drawn by the Committee under *subsection (1)(b)*.”.

—*Senator Niall Ó Donnghaile.*

[#This is the appropriate reference if amendment No. 39 is accepted.]

44. In page 20, between lines 22 and 23, to insert the following:

**“Duty to assess impact of policy and legislative proposals**

19. (1) This section applies where the Minister refers to the Sentencing Information and Guidelines Committee 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:
- (a) the resources required for the provision of prison places;
  - (b) the resources required for probation provision;



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- (c) the resources required for the provision of youth justice services.
- (2) The Committee must assess the likely effect of the proposal on the matters mentioned in *paragraphs (a) to (c) of subsection (1)*.
- (3) The Committee must prepare a report of the assessment and send the report to the Minister.”.

—*Senator Niall Ó Donnghaile.*

45. In page 20, between lines 22 and 23, to insert the following:

**“General Damages for Personal Injury Information Committee**

19. (1) The Council shall establish a committee to be known as the General Damages for Personal Injury Information Committee.
- (2) Subject to this section and such directions (if any) as the Council may give to it, the function of the General Damages for Personal Injury Information Committee shall be to—
- (a) collate, in such manner as it considers appropriate, information on general damages for personal injury awarded by the courts, and
  - (b) disseminate that information from time to time to judges and persons other than judges.
- (3) The General Damages for Personal Injury Information Committee, and any person authorised by it to act on its behalf, may, for the purpose of performing its function, make arrangements with the Courts Service to—
- (a) have access to court documents relating to personal injury proceedings, and
  - (b) take and retain copies of such documents.
- (4) Without prejudice to the generality of *subsection (2)*, the General Damages for Personal Injury Information Committee may—
- (a) collate information on decisions of the courts relating to general damages for personal injury,
  - (b) conduct research on general damages for personal injury awarded by the courts,
  - (c) disseminate decisions of the courts relating to general damages for personal injury,
  - (d) prepare and disseminate information on such decisions and other material relevant to its functions, and
  - (e) organise conferences, seminars and meetings relevant to its functions.
- (5) Any information disseminated under *subsection (4)* shall not disclose the names of the parties to the proceedings concerned that are the subject of the decisions of the courts concerned or the identity of any person who is named in, or is identifiable from, a document referred to in *subsection (3)* that is used for the purposes of *subsection (4)* except where such disclosure is required—

[SECTION 19]

- (a) by a judge for the purposes of the exercise of his or her judicial functions in proceedings before him or her, or
  - (b) pursuant to an order of a court under *subsection (6)*.
- (6) A court may, on application in that behalf, in any proceedings involving personal injury, if it considers that it is necessary in the interests of justice to do so, order that the requirement in *subsection (5)* not to disclose the names of parties to proceedings shall not apply in relation to specified decisions of the courts for the purposes of submissions to the court in relation to the general damages for personal injury to be imposed in those proceedings and the determination by the court of those damages.
- (7) An order of a court under *subsection (6)* shall be limited in its effect to any barrister or solicitor representing a party to the proceedings concerned.
- (8) In this section references to information shall include references to information in electronic or other forms.”.

—*Senator Lorraine Clifford-Lee.*

SECTION 30

- \*46. In page 28, lines 40 and 41, to delete all words from and including “draft” in line 40 down to and including line 41 and substitute the following:

“draft guidelines concerning judicial conduct and ethics, which guidelines shall include guidance as to the matters a judge should consider when deciding whether he or she should recuse himself or herself from presiding over legal proceedings, for adoption by the Council,”.

SECTION 33

- \*47. In page 33, line 24, to delete “committee” and substitute “Committee”.
- \*48. In page 33, line 29, to delete “any paragraph” and substitute “any of *paragraphs (a) to (d)*”.

SECTION 43

- \*49. In page 40, lines 15 and 16, to delete “if he or she” and substitute “if that Committee”.
- \*50. In page 40, to delete lines 36 to 41.

SECTION 51

- \*51. In page 45, to delete lines 8 and 9 and substitute the following:

“(ii) to request—

- (I) where no direction is given under *section 55(5)#*, that some or all of the hearing be conducted otherwise than in public, or
- (II) where a direction is given under *section 55(5)#*, the effect of which is that part of the hearing be conducted in public, that such part be conducted otherwise than in public.”.

[#This is the appropriate reference if amendment No. 55 is accepted.]

[SECTION 51]

**52.** In page 45, to delete lines 8 and 9 and substitute the following:

“(ii) where a direction is given under *section 55(5)#*, to request, in exceptional circumstances, that some or all of the hearing be held in private.”.

—*Senator Niall Ó Donnghaile.*

*[#This is the appropriate reference if amendment No. 56 is accepted.]*

**\*53.** In page 45, lines 13 to 15, to delete all words from and including “entitled,” in line 13 down to and including line 15 and substitute the following:

“entitled to request—

(a) where no direction is given under *section 55(5)#*, that some or all of the hearing be conducted otherwise than in public, or

(b) where a direction is given under *section 55(5)#*, the effect of which is that part of the hearing be conducted in public, that such part be conducted otherwise than in public.”.

*[#This is the appropriate reference if amendment No. 55 is accepted.]*

**54.** In page 45, lines 14 and 15, to delete all words from and including “under” in line 14 down to and including “public” in line 15 and substitute the following:

“under *section 55(5)#*, to request, in exceptional circumstances, that some or all of the hearing be held in private”.

—*Senator Niall Ó Donnghaile.*

*[#This is the appropriate reference if amendment No. 56 is accepted.]*

SECTION 55

**\*55.** In page 49, to delete lines 12 to 14 and substitute the following:

“(5) A hearing of a complaint before a panel of inquiry shall be conducted in public unless the Judicial Conduct Committee directs that in order to safeguard the administration of justice the hearing should be conducted in whole or in part otherwise than in public.”.

—*Senator Lorraine Clifford-Lee.*

**56.** In page 49, to delete lines 12 to 14 and substitute the following:

“(5) A hearing of a complaint before a panel of inquiry shall be conducted in public unless the Judicial Conduct Committee directs that in order to safeguard the administration of justice it should be conducted in private.”.

—*Senator Niall Ó Donnghaile.*

SECTION 66

**\*57.** In page 57, between lines 11 and 12, to insert the following:

“(4) The Registrar shall notify the judge concerned and the complainant in writing of the date, time and place of a hearing under *subsection (3)* in sufficient time for the judge concerned and the complainant to prepare for the hearing.”.

[SECTION 66]

\*58. In page 57, between lines 18 and 19, to insert the following:

“(5) *Section 56* shall apply for the purposes of a hearing under *subsection (3)* as it applies to the investigation of a complaint under this Chapter by a panel of inquiry subject to the modification that references in that section to a panel of inquiry shall be construed as references to the Judicial Conduct Committee.”.

\*59. In page 58, lines 21 and 22, to delete “or the inclusion of a reference to the name of the judge concerned in its annual report under *section 73*”.

\*60. In page 58, between lines 22 and 23, to insert the following:

“(12) Where a hearing relating to the investigation of a complaint has been held in public, the Judicial Conduct Committee shall publish, or cause to be published, a determination under *subsection (2)*.”.

\*61. In page 58, lines 23 and 24, to delete “wholly or partly in public” and substitute “in whole or in part otherwise than in public”.

SECTION 67

\*62. In page 59, lines 21 to 23, to delete all words from and including “and,” in line 21 down to and including “adjournment” in line 23.

\*63. In page 60, lines 13 and 14, to delete “proposed in either House of the Oireachtas or an Article 35.4.1<sup>o</sup> motion in respect of the judge concerned in the other House of the Oireachtas” and substitute “proposed by the Minister”.

\*64. In page 60, line 16, to delete “such House” and substitute “House of the Oireachtas”.

SECTION 68

\*65. In page 60, between lines 32 and 33, to insert the following:

“\*68. Any judge against whom a complaint is upheld as provided for under this Act can be identified in the public domain as having been sanctioned under this Act, unless the Judicial Conduct Committee directs that in order to safeguard the administration of justice their identity remain private.”.

—*Senator Niall Ó Donnghaile.*

SECTION 69

\*66. In page 61, line 9, to delete “otherwise than in public” and substitute the following:

“in public unless the court directs that in order to safeguard the administration of justice the proceedings should be conducted in whole or in part otherwise than in public”.

\*67. In page 61, to delete lines 20 and 21 and substitute the following:

“of any findings by a panel of inquiry made on the basis of evidence given otherwise than in public, or the publication in a report under *section 73* of information, referred to in *subsection (6)* or *(7)*# of that section, arising from a determination by the Judicial Conduct Committee made on the basis of evidence given otherwise than in public.”.

[#This is the appropriate reference if amendment No. 75 is accepted.]

[SECTION 69]

- \*68. In page 61, lines 23 and 24, to delete “or imprisonment for a term not exceeding 12 months or both”.

SECTION 73

- \*69. In page 62, between lines 22 and 23, to insert the following:

**“Expenses of witnesses**

73. The reasonable expenses (not including legal costs) of a person who attends before a panel of inquiry under *section 55*, or a hearing conducted by the Judicial Conduct Committee under *section 66*, shall be determined by the Judicial Conduct Committee and paid to the person by the Council out of moneys provided by the Oireachtas.”.

- \*70. In page 63, to delete lines 13 to 15 and substitute the following:

“(i) the number of cases in which a reprimand was issued by the Judicial Conduct Committee where the information relating to the reprimand is not, in accordance with *subsection (7)#*, included in the report,”.

*[#This is the appropriate reference if amendment No. 75 is accepted.]*

71. In page 63, between lines 19 and 20, to insert the following:

“(l) the judge concerned for each case in which a reprimand was issued by the Judicial Conduct Committee.”.

—*Senator Lorraine Clifford-Lee.*

72. In page 63, to delete lines 20 to 26.

—*Senator Lorraine Clifford-Lee.*

- \*73. In page 63, line 20, to delete “The Judicial Conduct Committee” and substitute “Subject to *subsections (6) and (7)#*, the Judicial Conduct Committee”.

*[#This is the appropriate reference if amendment No. 75 is accepted.]*

- \*74. In page 63, lines 24 to 26, to delete all words from and including “complainant,” in line 24 down to and including line 26 and substitute “complainant.”.

- \*75. In page 63, between lines 26 and 27, to insert the following:

“(6) The following information shall be included in a report under this section—

- (a) where the Judicial Conduct Committee issues a reprimand to a judge under *section 58*, the name of the judge concerned and the reprimand issued, and
- (b) the name of a judge to whom *section 66(11)* applies.

(7) Where the Judicial Conduct Committee issues a reprimand to a judge under *section 66(2)(b)*, the name of the judge concerned and the reprimand issued shall be included in a report under this section unless the Judicial Conduct Committee considers that in order to safeguard the administration of justice that information should not be included in the report.”.

[SECTION 74]

SECTION 74

\*76. In page 63, between lines 30 and 31, to insert the following:

**“Costs of legal representation**

74. (1) Where a hearing is conducted under *section 55(3)* or *66(3)* in relation to a complaint and a determination is made by the Judicial Conduct Committee that the complaint has not been substantiated, the judge concerned may apply to the Committee for the recovery of the reasonable legal costs and expenses associated with his or her legal representation (if any) connected with the hearing.
- (2) Where on application to it by the judge concerned under *subsection (1)*, the Judicial Conduct Committee considers that the interests of justice require the payment of the reasonable legal costs and expenses referred to in that subsection, the Committee shall nominate a solicitor, other than a solicitor who was involved in any hearing relating to the complaint concerned, to agree those legal costs and expenses.
- (3) In default of agreement under *subsection (2)*, the Judicial Conduct Committee shall—
- (a) refer the legal costs and expenses to the Taxing Master of the High Court for taxation, and
  - (b) nominate a solicitor (which may be the solicitor referred to in *subsection (2)*) to represent it in such taxation.
- (4) The Minister shall be liable to pay to the judge the legal costs and expenses agreed under *subsection (2)* or taxed under *subsection (3)*, as the case may be.”.

SECTION 75

\*77. In page 63, after line 35, to insert the following:

**“Sentencing guidelines**

75. (1) Sentencing guidelines to be adopted by the Council under *section 7* (in this Act referred to as “sentencing guidelines”) may relate to sentencing generally or to sentences in respect of a particular offence, a particular category of offence or a particular category of offender.
- (2) A range of sentences may be specified in sentencing guidelines that it is appropriate for a court to consider before imposing sentence on an offender in the proceedings before it.
- (3) The Sentencing Guidelines and Information Committee shall, in preparing draft sentencing guidelines, or draft amendments to sentencing guidelines, for submission to the Board and the Board shall, in reviewing such draft guidelines, or such draft amendments, take account of—
- (a) sentences that are imposed by the courts,
  - (b) the need to promote consistency in sentences imposed by the courts,
  - (c) the impact of decisions of the courts relating to sentences on the victims of the offences concerned,

[SECTION 75]

- (d) the need to promote public confidence in the system of criminal justice,
- (e) the financial costs involved in the execution of different types of sentence and the relative effectiveness of them in the prevention of re-offending, and
- (f) such factors as the Committee or the Board, as the case may be, considers appropriate relating to the offence concerned and the offender committing the offence for the purpose of specifying a range of sentences referred to in *subsection (2)*.”.

\*78. In page 63, after line 35, to insert the following:

**“Courts to have regard to sentencing guidelines**

76. 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.”.

NEW SECTION

79. In page 65, after line 11, to insert the following:

**“Amendment of the Civil Liability and Courts Act 2004**

80. The Civil Liability and Courts Act 2004 is amended by the insertion of the following section after section 22:

“22A. Section 22 shall apply until such time as guidelines on general damages for personal injury are forthcoming from the Judicial Council.”.”.

—*Senator Lorraine Clifford-Lee.*