



SEANAD ÉIREANN

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

LEASUITHE TUARASCÁLA
REPORT AMENDMENTS

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JUDICIAL COUNCIL BILL 2017 —REPORT

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

*1. In page 7, between lines 21 and 22, to insert the following:

“(b) the Personal Injuries Guidelines Committee,”.

*2. In page 8, between lines 5 and 6, to insert the following:

“ “Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);”.

*3. In page 8, line 32, to delete “as so” and substitute “so as”.

*4. In page 10, between lines 12 and 13, to insert the following:

“ “personal injuries guidelines” shall be construed in accordance with *section 82(1)#*.”.

[#This is a reference to a subsection proposed to be inserted by amendment No. 39.]

*5. In page 10, between lines 12 and 13, to insert the following:

“ “Personal Injuries Guidelines Committee” means the committee established under *section 18#*.”.

[#This is reference to the section proposed to be inserted by amendment No. 21.]

*6. In page 10, between lines 12 and 13, to insert the following:

“ “personal injury” has the meaning it has in the Civil Liability Act 1961;”.

*7. In page 12, between lines 23 and 24, to insert the following:

“(g) adopt—

(i) draft personal injuries guidelines prepared and submitted by the Personal Injuries Guidelines Committee to the Board under *section 18(2)(a)#* with the modifications (if any) made by the Board under *section 11(1)(d)##*, or

(ii) any draft amendments to personal injuries guidelines prepared and submitted by that Committee to the Board under *section 18(2)(b)#* with the modifications (if any) made by the Board under *section 11(1)(d)##*,

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

submission and publish the personal injuries guidelines and amendments in such manner as it considers appropriate as soon as practicable following such adoption.”.

[#These are references to paragraphs proposed to be inserted by amendment No. 21.]

[##This is a reference to the paragraph proposed to be inserted by amendment No. 13.]

*8. In page 12, between lines 32 and 33, to insert the following:

“(h) promote among judges, in such manner as it considers appropriate, an understanding of the principles governing the assessment and award of damages for personal injuries.”.

*9. In page 13, line 6, to delete “Act,” and substitute “Act, and”.

*10. In page 13, line 7, to delete “committee,” and substitute “committee.”.

*11. In page 13, to delete lines 8 and 9 and substitute the following:

“(4) The Council may for the purposes of the performance of its functions or the functions of a committee—

(a) enter into contracts or arrangements, and

(b) exercisable only with the consent of the Minister, engage consultants or advisers.”.

*12. In page 13, lines 10 and 11, to delete “the functions referred to in *paragraphs (a) to (d)* and *paragraph (g)* of *subsection (2)* shall not be—” and substitute the following:

“the functions referred to in *paragraphs (a) to (d)* and *paragraphs (g)# and (h)* of *subsection (2)*, other than in so far as the functions referred to in *paragraphs (d), (g)* and *(h)* refer to publication, shall not be—”.

[#This is a reference to the paragraph proposed to be inserted by amendment No. 7.]

*13. In page 15, between lines 6 and 7, to insert the following:

“(d) shall review—

(i) draft personal injuries guidelines prepared by the Personal Injuries Guidelines Committee and submitted by it to the Board under *section 18(2)(a)#*, and

(ii) draft amendments to personal injuries 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.”.

[#These are references to paragraphs proposed to be inserted by amendment No. 21.]

*14. In page 18, line 38, after “*sections 17*,” to insert “*18#*”.

[#This is a reference to the section proposed to be inserted by amendment No. 21.]

*15. In page 19, line 21, after “apply to” to insert “the Personal Injuries Guidelines Committee,”.

*16. In page 19, to delete lines 24 and 25 and substitute the following:

“17. (1) The Council shall—

- (a) establish a committee to be known as the Judicial Studies Committee, and
- (b) at the first meeting of the Council, specify the date upon which that Committee shall stand established which shall be a date not later than 6 months following that first meeting.”.

17. In page 19, in line 31, after “judges,” to insert the following:

“including materials relevant to the exercise by judges of their functions in conducting criminal trials with a jury, including but not limited to the functions of:

- (i) trial management;
- (ii) jury management; and
- (iii) directing the jury,”.

—*Senators Ivana Bacik, Kevin Humphreys, Gerald Nash, Aodhán Ó Ríordáin.*

*18. In page 19, between lines 36 and 37, to insert the following:

“(ii) the conduct of trials by jury in criminal proceedings;”.

19. In page 19, after line 38, to insert the following:

“(iv) unconscious bias,”.

—*Senators Lynn Ruane, Alice-Mary Higgins, Colette Kelleher.*

*20. In page 20, line 2, to delete “in personal injury actions” and substitute “in respect of personal injuries”.

*21. In page 20, between lines 7 and 8, to insert the following:

“Personal Injuries Guidelines Committee

18. (1) The Council shall—

- (a) establish a committee to be known as the Personal Injuries Guidelines Committee, and
 - (b) at the first meeting of the Council, specify the date upon which that Committee shall stand established which shall be a date not later than 6 months following that first meeting.
- (2) The functions of the Personal Injuries Guidelines Committee shall be to prepare and submit to the Board for its review—
- (a) draft personal injuries guidelines in accordance with *section 82#*, and
 - (b) draft amendments to the personal injuries guidelines in accordance with that

section.

- (3) The Council may issue directions to the Personal Injuries Guidelines Committee in relation to the performance by it of the functions referred to in *subsection (2)*.
- (4) The Personal Injuries Guidelines Committee shall submit the first draft of personal injuries guidelines to the Board not later than 12 months after the date on which the Committee stands established.
- (5) The Personal Injuries Guidelines Committee may, from time to time, review the personal injuries guidelines and shall—
 - (a) review those guidelines within 3 years of the first guidelines being adopted by the Council under *section 7* and at least once thereafter in every 3 year period beginning on the completion of the first review, and
 - (b) submit the outcome of each review under this subsection to the Board.
- (6) Where the outcome of a review under *subsection (5)* includes a recommendation for amendments to the guidelines, the Personal Injuries Guidelines Committee shall prepare a draft of such amendments and shall submit the draft amendments to the Board for its review at the same time as the outcome of the review is submitted to it.
- (7) The Personal Injuries Guidelines Committee, and any person authorised by it to act on its behalf, may, for the purpose of performing its functions under *subsection (2)*—
 - (a) require any person to provide it with such records, documents or information as it may reasonably require for that purpose,
 - (b) consult with such persons as the Committee considers appropriate, including the Personal Injuries Assessment Board,
 - (c) conduct research on damages for personal injuries including—
 - (i) the level of damages awarded by courts in the State and by courts in places outside the State, and
 - (ii) settlements of claims for damages for personal injuries,
 - (d) organise conferences, seminars and meetings relevant to those functions.
- (8) Without prejudice to his or her obligations under the Data Protection Regulation and the Data Protection Act 2018, a person of whom a requirement is made under *subsection (7)(a)* shall comply with that requirement.
- (9) A person who, without reasonable cause, contravenes *subsection (8)* is guilty of an offence and is liable on summary conviction to a class A fine.
- (10) The court in which a conviction for an offence under this section is recorded or affirmed may order that the person convicted shall comply with the requirement made under *subsection (7)(a)*, the contravention of which led to the conviction concerned.
- (11) The Personal Injuries Guidelines Committee shall prepare and submit to the Council, for inclusion in the annual report of the Council under *section 30*, a report in writing of the activities of the Committee during the period to which the annual report

relates.”.

[#This is a reference to the section proposed to be inserted by amendment No. 39.]

*22. In page 20, between lines 7 and 8, to insert the following:

“Membership of Personal Injuries Guidelines Committee

19. (1) The Personal Injuries Guidelines Committee shall comprise 7 judges nominated by the Chief Justice as follows:
- (a) a judge of the Supreme Court;
 - (b) a judge of the Court of Appeal;
 - (c) 2 judges of the High Court;
 - (d) a judge of the Circuit Court;
 - (e) a judge of the District Court; and
 - (f) at the discretion of the Chief Justice, a judge of either the Circuit Court or the District Court.
- (2) The Chief Justice shall appoint one of the judges nominated under *subsection (1)* to be a member of the Personal Injuries Guidelines Committee to act as chairperson of the Committee.”.

*23. In page 20, between lines 7 and 8, to insert the following:

“Term of membership of Personal Injuries Guidelines Committee

20. (1) Subject to *subsection (5)* and *section 21(3)#*, each member of the Personal Injuries Guidelines Committee shall continue to be a member of the Committee for a term of 4 years from the date of his or her nomination unless he or she sooner dies or resigns.
- (2) Subject to *subsection (3)*, a member of the Personal Injuries Guidelines Committee whose term of membership expires with the passage of time shall be eligible for re-nomination to the Committee for a further term of 4 years.
- (3) A member of the Personal Injuries Guidelines Committee who has served 2 terms as a member of that Committee shall not be eligible for re-nomination as a member of the Committee.
- (4) A member of the Personal Injuries Guidelines Committee 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) Where a member of the Personal Injuries Guidelines Committee ceases to be a judge, or ceases to hold the judicial office which he or she held when he or she was nominated to be a member under *section 19##*, he or she shall thereupon cease to be a member of the Committee.
- (6) Subject to *section 22(4)###* the Personal Injuries Guidelines Committee may act

notwithstanding any vacancy in its membership.”.

[#This is a reference to a subsection proposed to be inserted by amendment No. 24.]

[##This is a reference to the section proposed to be inserted by amendment No. 22.]

[###This is a reference to a subsection proposed to be inserted by amendment No. 25.]

*24. In page 20, between lines 7 and 8, to insert the following:

“Casual vacancies in membership of Personal Injuries Guidelines Committee

21. (1) Where a member of the Personal Injuries Guidelines Committee dies, retires or resigns from judicial office, resigns from the Personal Injuries Guidelines Committee in accordance with *subsection (4) of section 20#* or ceases to be a member of that Committee under *subsection (5) of that section*, the vacancy so occasioned shall be filled by a judge nominated by the Chief Justice to be a member of the Personal Injuries Guidelines Committee.
- (2) The term of office of a member of the Personal Injuries Guidelines Committee nominated under *subsection (1)* shall be for the unexpired period of the term of membership of the member of the Committee whom he or she has replaced.
- (3) A term of membership of the Personal Injuries Guidelines Committee of any duration resulting from a nomination under *subsection (1)* shall be regarded as a term of membership for the purposes of *section 20(3)#*.”.

[#These are references to subsections proposed to be inserted by amendment No. 23.]

*25. In page 20, between lines 7 and 8, to insert the following:

“Meetings and procedures of Personal Injuries Guidelines Committee

22. (1) The Personal Injuries Guidelines Committee shall hold such and so many meetings as may be necessary for the performance of its functions.
- (2) The first meeting of the Personal Injuries Guidelines Committee shall be held not later than 1 month after the date on which the Committee stands established under *section 18(1)(b)#*.
- (3) At a meeting of the Personal Injuries Guidelines 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 Personal Injuries Guidelines Committee shall be 3 or such other number, not being less than 3, as the Committee may determine.
- (5) Subject to this Act, the Personal Injuries Guidelines Committee shall regulate its own procedures.”.

[#This is a reference to a paragraph proposed to be inserted by amendment No. 21.]

*26. In page 20, lines 9 and 10, to delete all words from and including “(1) The Council” in line 9 down to and including line 10 and substitute the following:

“(1) The Council shall—

- (a) establish a committee to be known as the Sentencing Guidelines and Information Committee, and
- (b) at the first meeting of the Council, specify the date upon which that Committee shall stand established which shall be a date not later than 6 months following that first meeting.”.

*27. In page 20, between lines 15 and 16, to insert the following:

“(c) monitor the operation of sentencing guidelines,”.

28. In page 20, between lines 29 and 30, to insert the following:

“(b) conduct public consultation on draft sentencing guidelines,”.

—*Senators Lynn Ruane, Alice-Mary Higgins, Colette Kelleher.*

*29. In page 24, to delete lines 36 and 37 and substitute the following:

“(2) The first meeting of the Sentencing Guidelines and Information Committee shall be held not later than 1 month after the date on which the Committee stands established under *section 18(1)(b)*.”.

30. In page 25, between lines 10 and 11, to insert the following:

“Sentencing policy review

24. The Minister shall—

- (a) not later than 2 years after the enactment of this Act, commence a review of current statutory mandatory, minimum and presumptive sentencing provisions, and
- (b) not later than 12 months after its commencement, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.”.

—*Senators Lynn Ruane, Alice-Mary Higgins, Colette Kelleher.*

*31. In page 26, between lines 6 and 7, to insert the following:

“(2) The Council shall, at the first meeting of the Council, specify the date upon which the Judicial Support Committees shall stand established which shall be a date not later than 6 months following that first meeting.”.

*32. In page 28, between lines 20 and 21, to insert the following:

“Interim Secretary to Council

27. (1) The Chief Justice may appoint a member of staff of the Courts Service to act as interim Secretary to the Council (in this section referred to as the “interim Secretary”)

pending the appointment of the Secretary by the Board under *section 26(1)* and pending that appointment—

- (a) the interim Secretary shall perform all the functions assigned to the Secretary by or under this Act, and
 - (b) a reference in this Act to the Secretary shall include a reference to the interim Secretary.
- (2) When a Secretary is appointed under *section 26(1)*, the interim Secretary shall cease to hold office.”.

*33. In page 32, between lines 3 and 4, to insert the following:

“Prohibition on disclosure of confidential information

34. (1) A person shall not, unless he or she is required or permitted by law or duly authorised by the Council to do so, disclose confidential information obtained by him or her while performing functions—

- (a) as a member of the Council, the Board or a committee, or
 - (b) as the Secretary, Registrar or a member of staff of the Council, or as a consultant, adviser or other person who is or was engaged under contract or other arrangement by the Council.
- (2) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a class A fine.
- (3) In this section, “confidential information” includes—
- (a) information that is expressed by the Council, the Board or a committee to be confidential either as regards particular information or as regards information of a particular class or description, and
 - (b) proposals of a commercial nature or tenders submitted to the Council, the Board or a committee by consultants, advisers or any other person.”.

*34. In page 33, lines 6 and 7, to delete all words from and including “(1) The Council” in line 6 down to and including line 7 and substitute the following:

“(1) The Council shall—

- (a) establish a committee which shall be known as the Judicial Conduct Committee, and
- (b) at the first meeting of the Council, specify the date upon which that Committee shall stand established which shall be a date not later than 6 months following that first meeting.”.

*35. In page 39, to delete lines 20 and 21 and substitute the following:

“(2) The first meeting of the Judicial Conduct Committee shall be held not later than 1 month after the date on which the Committee stands established under *section 35(1)(b)*.”.

[#This is a reference to a paragraph proposed to be inserted by amendment No. 34.]

- *36. In page 68, line 35, to delete “or 65,” and substitute “or 65, and”.
- *37. In page 68, line 37, to delete “66, and” and substitute “66.”.
- *38. In page 68, to delete lines 38 and 39.
- *39. In page 70, between lines 5 and 6, to insert the following:

“Personal injuries guidelines

- 82.** (1) Personal injuries guidelines adopted by the Council under *section 7*, including any amendments adopted under that section (in this Act referred to as “personal injuries guidelines”) shall contain general guidelines as to the level of damages that may be awarded or assessed in respect of personal injuries and without prejudice to the generality of the foregoing, the guidelines may include guidance on any or all of the following:
- (a) the level of damages for personal injuries generally;
 - (b) the level of damages for a particular injury or a particular category of injury;
 - (c) the range of damages to be considered for a particular injury or a particular category of injuries;
 - (d) where multiple injuries have been suffered by a person, the consideration to be given to the effect of those multiple injuries on the level of damages to be awarded in respect of that person.
- (2) The Personal Injuries Guidelines Committee in preparing draft personal injuries guidelines or draft amendments to personal injuries guidelines shall have regard to the matters set out in *subsection (3)* and the Board, in reviewing those draft guidelines or draft amendments, may have regard to such of the matters set out in that subsection as it considers appropriate for the purposes of its review.
- (3) The matters referred to in *subsection (2)* are:
- (a) the level of damages awarded for personal injuries by—
 - (i) courts in the State, and
 - (ii) courts in such places outside the State as the Committee or the Board, as the case may be, considers relevant;
 - (b) principles for the assessment and award of damages for personal injuries determined by the High Court, the Court of Appeal and the Supreme Court;
 - (c) guidelines relating to the classification of personal injuries;
 - (d) the need to promote consistency in the level of damages awarded for personal injuries;
 - (e) such other factors that the Committee or the Board, as the case may be, considers appropriate including factors that may arise from any records, documents or information received, consultations held, research conducted or conferences,

seminars or meetings organised (as referred to in *section 18(7)#*).”.

[#This is a reference to a subsection proposed to be inserted by amendment No. 21.]

*40. In page 70, line 32, after “of justice” to insert the following:

“and the reasons it is so satisfied shall be stated by the court in its decision”.

*41. In page 71, to delete lines 20 to 31 and substitute the following:

“Restrictions of rights and obligations under Data Protection Regulation

86. (1) The rights and obligations provided for in Articles 12 to 22 (and Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 22) and Article 34 of the Data Protection Regulation are, in so far as the rights and obligations relate to the processing of personal data by a person or body specified in *subsection (2)*, restricted to the extent necessary and proportionate to enable the person or body perform his, her or its functions under *Part 5*.

(2) A person or body referred to in *subsection (1)* means—

- (a) the Judicial Conduct Committee,
- (b) the Registrar,
- (c) the Complaints Review Committee,
- (d) a designated judge or designated judges,
- (e) a panel of inquiry, or
- (f) the registrar to a panel of inquiry.

(3) In this section—

“personal data” has the same meaning as it has in Article 4 of the Data Protection Regulation;

“processing” has the same meaning as it has in Article 4 of the Data Protection Regulation.”.

*42. In page 72, after line 7, to insert the following:

“Amendment of Personal Injuries Assessment Board Act 2003

89. The Personal Injuries Assessment Board Act 2003 is amended—

- (a) in section 54(1), by the deletion of paragraphs (b) and (ba), and
- (b) in section 54A(1), by the substitution of “*paragraph (c), (d)*” for “*paragraph (b), (ba), (c), (d)*”.

*43. In page 72, after line 7, to insert the following:

“Amendment of section 22 of Civil Liability and Courts Act 2004

90. Section 22 of the Civil Liability and Courts Act 2004 is amended—

- (a) by the substitution of the following subsection for subsection (1):
 - “(1) The court shall, in assessing damages in a personal injuries action—
 - (a) have regard to the personal injuries guidelines (within the meaning of *section 2* of the *Judicial Council Act 2019*), and
 - (b) where it departs from those guidelines, state the reasons for such departure in giving its decision.”,
- (b) in subsection (2), by the substitution of “other than those personal injuries guidelines” for “other than the Book of Quantum”, and
- (c) by the deletion of subsection (3).”.