

Draft General Scheme of Judicial Appointments Commission Bill 2020

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BILL

entitled

An Act to establish a body to be known as the Judicial Appointments Commission; to provide for the making by that body of recommendations in respect of appointments to judicial office; to make provision for membership of that body; to amend the qualification requirements for appointment to judicial office; to enable through other procedures the making of recommendations to the offices of Chief Justice, President of the Court of Appeal and President of the High Court; to establish a Judicial Appointments Commission Office; to dissolve the Judicial Appointments Advisory Board; and to provide for related matters.

Head 1

Short title and commencement

To provide

- (1) that the Act may be cited as the Judicial Appointments Commission Act 2020
- (2) The Act comes into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to a particular purpose or provision and different days may be so appointed for different purposes or different provisions and for the repeal of different enactments effected by Head 4.

Head 2

Definitions

To provide for

(1) the definition of certain terms used in the Bill , including:

“judicial office” (means all judicial offices in the State);

“ lay member” (means a lay person who is a member of the Commission).

“lay person” (means persons who are not or were never serving judges , practicing solicitors or barristers during a period to be prescribed and law officers including the DPP;

“Minister” (means the Minister for Justice).

Head 3

Expenses

To provide

- (1) that the expenses incurred by the Minister in the administration of the Bill shall be paid out of moneys provided by the Oireachtas, as sanctioned by the Minister for Public Expenditure and Reform

Head 4

Repeals

To provide

- (1) for the repeal of Part IV, other than section 17A (and the definition of “judicial office” in section 12 in so far as it applies to section 17A) and section 19A, of the Act of 1995.

Head 5

Review

To provide that

- (1) A review of the Act shall be commenced by the Minister no later than 5 years after the establishment day;
- (2) The Minister shall make a report to each House of the Oireachtas of his or her findings and conclusions not later than 12 months after the expiration of the said 5 years
- (3) The Minister shall have regard to the most recent report and recommendations submitted to him or her under Head 60.

Head 6

Recommendations to be based on merit

To provide that

- (1) A decision to recommend a person for appointment to judicial office shall be based on merit and shall have regard to the following objectives:
 - (a) that the membership of the judiciary should comprise equal numbers of men and women,
 - (b) that the membership of the judiciary should, (to the extent feasible and practicable) reflect the diversity within the population as a whole.
 - (c) that the membership of the judiciary should include persons with a proficiency in the Irish language

Head 7

Establishment day

To provide that –

- (1) The Minister shall appoint the establishment day

Head 8

Establishment of Judicial Appointments Commission

To provide

(1) for the establishment of the Commission.

(2) That the membership of the Commission shall be as provided under Head 9.

Head 9

Membership of Commission

To provide that

- (1) the Commission shall consist of 9 members being—
 - (a) the Chief Justice, who shall be ex-officio Chairperson of the Commission
 - (b) a Court President being one of the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court or the President of the District Court, to be determined in accordance with subhead (2)
 - (c) two nominees of the Judicial Council, subject to the provisions of subhead (3)
 - (d) the Attorney General, subject to the provisions of subhead (4)
 - (e) 3 lay persons appointed under Head 15
 - (f) A lay person who is a member of the Irish Human Rights and Equality Commission, nominated by that Commission.
- (2) The member referred to in subhead (1) (b) shall , for the purposes of the determination of a recommendation by the Commission in respect of a judicial vacancy or vacancies in a court, the President of that Court.
- (3) One of the members referred to in subhead (1)(c) shall have been a practicing barrister for the requisite number of years standing at the time of appointment as a judge, and one of the members referred to in subhead (1)(c) shall have been a practicing solicitor for the requisite number of years standing at the time of appointment as a judge.
- (4) The member referred to in subhead (1) (d) shall be a member without a vote

Head 10

Appointment of Commission: further provisions

To provide that

- (1) The Minister may before the establishment day of the Commission designate persons to be appointed as the first lay members of the Commission.
- (2) If on the day of the establishment of the Commission such person stands so designated the person shall on that day stand appointed as a lay member of the Commission.
- (3) Persons to be appointed under subhead (1) shall be recommended by the Public Appointments Service in the manner provided under Head 14.
- (4) Persons to be appointed under subhead (1) shall be appointed by the Minister in the manner provided under Head 15, save that the provisions of Head 15 (2) shall not apply to the appointment of those persons.

Head 11

General functions of the Commission

To provide that

- (1) The general functions of the Commission shall be—
 - (a) to select and recommend persons to the Minister for appointment to judicial office and
 - (b) for the purposes of *paragraph (a)*, to approve a statement of selection procedures and a statement of requisite skills and attributes for inclusion in a published statement.
- (2) Subject to this Act, the Commission shall be independent in the performance of its functions.
- (3) The Commission shall have all such powers as are necessary or expedient for the performance of its functions.

Head 12

Further provisions concerning Commission: terms and conditions of membership, etc.

To provide

- (1) That each member of the Commission shall act on a part-time basis subject to such terms and conditions (other than the payment of remuneration and allowances for expenses) as the Government may determine,
- (2) for the payment of remuneration and expenses by the Commission to members of the Commission other than judicial members, the Attorney General and the lay member nominated by the Irish Human Rights and Equality Commission.
- (3) that membership of the Commission, other than for judicial members, the attorney general and the lay member nominated by the Irish Human Rights and Equality Commission shall be for a period of 3 years from the date of appointment .
- (4) that members subject to a 3 year period of appointment may be re-appointed by the Minister for one further period of 3 years without the need for a recommendation by the PAS .
- (5) That a lay person appointed as a lay member shall cease to be a member where he or she ceases to be a lay person.

Head 13

Contracts and arrangements with persons

To provide

- (1) that the Commission may as it considers necessary to assist it in the performance of its functions, enter into contracts or arrangements with any person, and with the consent of the Minister, appoint consultants or advisers .

- (2) that save as provided under Head 55, no contract or arrangement with a person , or appointment of a consultant or adviser shall enable the person , consultant or adviser to have any role in the performance by the Commission of its function of selecting and recommending persons for appointment to judicial office

- (3) That the Commission may, out of the resources at its disposal, pay to a person, consultant or adviser such fees or allowances for expenses as the Commission may with the consent of the Minister and the Minister for Public Expenditure and Reform determine.

- (4) That the appointment of a person as a consultant or adviser shall be for such period and be on such terms and conditions as the Commission considers appropriate.

Head 14

Recommendation of lay person for appointment as member

To provide

(1) That the Public Appointments Service shall recommend lay persons for appointment by the Minister to the Commission .

(2) that, for the above purpose, having regard to the provisions of Head 9, and thereafter from time to time when requested to do so by the Minister, the Public Appointments Service shall organize and hold a selection process for the purposes of subhead (1)

(3) that the Public Appointments Service shall ensure that a lay person is recommended for appointment only if it is satisfied that the person –

(a) is a fit and proper person to be so appointed,

(b) is suitable for appointment having due regard to his or her having such experience, qualifications, training or expertise as is appropriate having regard to the functions of the Commission.

(4) The Public Appointments Service shall have regard to

- the objective that lay members should amongst them have knowledge of, and experience in, as many as possible of the matters specified in subhead (5).
- the objective that the lay members should comprise an equal number of women and men
- the objective that the lay members should reflect the diversity of the population as a whole.

(5) The matters referred to in subhead (4) are matters connected with:

- (a) the operation of the courts;

- (b) the provision of supports to persons who are victims of crime or to users of the services provided by the courts;
- (c) human rights, equality or issues concerning diversity amongst members of society
- (d) offending behavior or the rehabilitation of offenders (or both)
- (e) processes and procedures for making appointments to public office or to senior positions in public or private sector organisations;
- (f) commerce, finance, administration (including public administration), civil society, trade union activity or academia
- (g) board membership and corporate governance; and
- (h) professional dispute resolution or mediation activities.

Head 15

Appointment of lay persons as members

To provide

- (1) for the appointment by the Minister of lay persons to be lay members of the Commission
- (2) that the Minister shall appoint a lay member only on the passing of a resolution approving any such appointment by each House of the Oireachtas.
- (3) That subhead (1) shall apply to the filling of a casual vacancy (as provided under Head 21) in the office of lay member.

Head 16

Commission shall be a body corporate, seal of Commission

To provide

- (1) That the Commission shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name and shall, with the consent of the Minister and the Minister for Public Expenditure and Reform, have the power to acquire, hold and dispose of land or an interest in land, and to acquire, hold and dispose of any other property.

- (2) for the authentication of the seal of the Commission and to provide for the taking of judicial notice of the seal and any document purporting to be an instrument made by, and to be sealed with the seal of, the Commission.

- (3) that any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission in that behalf.

Head 17

Membership of the Oireachtas, European Parliament and local authority.

To provide

- (1) for the cessation of membership as a member of the Commission or as the Director where a member or the Director is nominated as a member of the Seanad, is elected as a member of the Dail or Seanad or as a member of the European Parliament, or is regarded as being elected to that Parliament , or is elected or co-opted to be a member of a local authority

- (2) in relation to the matters the subject of subhead (1), for the secondment of a member of staff of the Office from that employment and for consequential provision in relation to cessation of remuneration or allowances .

- (3) that a person who is for the time being entitled to be a member of the Houses of the Oireachtas, or a local authority or is a member of the European Parliament, shall be disqualified for membership of the Commission or for employment in any capacity by the Commission or the Office.

Head 18

Procedures of Commission and committees

To provide -

- (1) that the Commission shall hold such and so many meetings as may be necessary for the due performance of its functions
- (2) for the fixing by the Chairperson of the date, time and place of the first meeting of the Commission which shall be a date no later than 3 months from the establishment day.
- (3) that the Chairperson shall if present be the chairperson of the meeting and if not present, one of the Judicial Council nominees shall be the chairperson of the meeting, by nomination of the Chief Justice.
- (4) that the Commission shall regulate its own procedures
- (5) that the quorum for a meeting of the Commission shall, unless the Minister otherwise directs, be 5 members, 2 of whom shall be lay members.
- (6) that the Commission may act notwithstanding one or more vacancies in its membership.

Head 19

Procedures Committee and other committees of Commission

To provide

- (1) for the establishment by the Commission of a Judicial Appointments Procedures Committee to perform the functions assigned to that Committee under Heads 55, 56, 57, 58, 59 and 60 of this Act and such other functions of the Commission as the Commission considers appropriate .
- (2) that the Procedures Committee shall consist of 5 members of the Commission, 2 of whom shall be lay members, and the chairperson of that Committee shall be the Chief Justice or a Judicial Council nominee member as the Chief Justice shall determine .
- (3) that the Procedures Committee shall determine its own procedures.
- (4) that the Commission may establish committees of the Commission to assist the Commission or the Procedures Committee in performing one or more of their functions under this Act.
- (5) that a committee shall consist of such and so many members of the Commission, as may be determined by the Commission, subject to such committee comprising the same number of lay members as judicial members and the chairperson of the committee shall be the Chief Justice or a Judicial Council nominee member as the Chief Justice may determine.
- (6) that a committee shall determine its own procedures.
- (7) for the payment by the Commission to members of a committee (other than judicial members, the Attorney General and the lay member nominated by the Irish Human Rights and Equality Commission) of allowances for expenses if any as determined by the Commission with the consent of the Minister and the Minister for Public Expenditure.

Head 20

Member of Commission ceasing to hold judicial office

To provide

- (1) that the Chief Justice, the Court President member or a Judicial Council nominee member shall, upon ceasing for any reason to hold judicial office , shall cease to be a member of the Commission.
- (2) for the replacement of the Chief Justice by the President of the Court of Appeal , the replacement of a Court President member by the next most senior ordinary judge of the relevant court and of a Judicial Council nominee by another nominee of the Council until a successor is appointed.

Head 21

Member of Commission ceasing to hold office

To provide

- (1) for resignation by notice in writing to the Minister of a lay member.

- (2) That where a lay member dies, resigns, is removed from office or otherwise ceases to hold office the casual vacancy arising shall be filled in the like manner in which the member who occasioned the vacancy was appointed, and a person appointed under this subhead shall fill the vacancy for the unexpired term.

Head 22

Certain grounds for disqualification or being ineligible to hold office

To provide –

- (1) in relation to a lay member , for grounds of disqualification or ineligibility for membership of the Commission to include grounds of
 - conviction on indictment of an offence,
 - conviction of an offence involving fraud or dishonesty,
 - having a declaration under section 819 of the Companies Act made against the member, or being deemed subject to such declaration
 - being subject to, or deemed subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act , whether by virtue of that chapter , or any other provision of that Act,

- (2) that a person shall not be eligible for appointment as a member of the Commission if any of the disqualification grounds (a) to (d) of subhead (1) apply.

Removal of member of Commission

To provide

- (1) for the removal by the Government of a lay member of the Commission where the Government is satisfied that one or more of the following grounds apply, and only where a resolution is passed by each House of the Oireachtas calling for the removal of that member :
 - (2) that the grounds are that a member
 - has become incapable through ill health or effectively performing the functions of the office
 - has committed stated misbehavior
 - has a conflict of interest of such significance that he or she should cease to hold office
 - is otherwise unfit to hold office or unable to discharge the functions of the office
 - (3) for notification in writing of the member concerned by the Government of the proposal to remove a member.
 - (4) that the notification referred to in subhead (3) shall include a statement
 - o of the reasons for the proposed removal.
 - o that the member may make representations to the Government in such form and manner as may be specified by the Government as to why the member should not be removed from office
 - o that where no representation is received, the Government shall proceed with the removal of the member from office
 - (5) that in considering whether to remove a member from office the Government shall take account of any representations made by the member and any other matter the Government consider relevant for the purpose of their decision

(6) that where Government decide the person should be removed from office in accordance with this section, the Government shall notify the member in writing of their decision and the reasons for the decision.

Head 24

Accountability of Director to Public Accounts Committee

To provide that

- (1) the Director shall, whenever required in writing to do so by the Public Accounts Committee, give evidence to that Committee –
 - in relation to accounts that the Commission is required to prepare under this Act
 - the economy and efficiency of the Commission in the use of its resources
 - the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
 - any matter affecting the Commission referred to in a report of the Comptroller and Auditor General that is laid before Dail Eireann.
- (2) that in giving evidence under this section, the Director shall not question or express an opinion on the merits of—
 - (a) any policy of the Government or a Minister of the Government, or
 - (b) the objectives of such a policy.
- (3) For a definition of “Public Accounts Committee”

Accountability of Director to other Oireachtas Committees

To provide –

- (1) That the Director shall, at the request in writing of a Committee of the Oireachtas, attend before it to give account for the general administration of the Commission.
- (2) That the Director shall not be required to give account before a Committee—
 - (a) for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State, or
 - (b) where the giving of such account would involve disclosure of proceedings, communications or matters contrary to Head 31
- (3) that the Director shall inform the Committee where he or she is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subhead 2 (a)* applies, and shall inform the Commission of that opinion and the reasons for the opinion and shall do so in writing unless the information is conveyed to the Committee at a time the Director is before it.
- (4) for a determination by the High Court of the question whether the matter is one to which subhead 2(a) applies where a Committee has not withdrawn a request having been informed by the Director of his or her opinion, on the application of the Director or the Chairperson of the Committee.
- (5) That pending the determination of the matter by the High Court, the Director shall not attend before the Committee to give account for the matter the subjects of the application

- (6) That if the High Court determines that matter is one to which subhead 2(a) applies, the Committee shall withdraw the request , but if the High Court determines that the matter is one to which subhead 2(a) does not apply, the Director shall attend before the Committee

- (7) That in the performance of his or her duties under this section, the Director shall not question or express an opinion on the merits of—
 - (a) any policy of the Government or a Minister of the Government, or
 - (b) the objectives of such a policy.

- (8) For a definition of “Committee” for the purposes of this Head

Head 26

Advances to the Commission

To provide

- (1) For the advancing of amounts by the Minister to the Commission out of moneys provided by the Oireachtas as the Minister may determine for the purposes of expenditure by the Commission, with the consent of the Minister for Public Expenditure and Reform.

Head 27

Accounts

To provide –

- (1) for the keeping of accounts by the Commission (annual accounts) as the Minister may with the consent of the Minister for Public Expenditure approve and for the keeping of special accounts as the Minister may with the consent of the Minister for Public Expenditures direct from time to time.
- (2) for the submission of annual accounts to the Comptroller & Auditor General for audit , for the presentation to the Minister of the annual accounts and any special accounts and a copy of the Comptroller and Auditor General's Report on the accounts and for the laying of copies thereof before each House of the of the Oireachtas.

Head 28

Annual Report

To provide

- (1) for the submission by the Commission of an annual report to the Minister not later than 6 months after the end of each year, and for the laying of that report before the Houses of the Oireachtas.
- (2) That the first report of the Commission, where such report would relate to a period less than 6 months, shall relate to that period and the following year
- (3) a prohibition of the disclosure in an annual report of matters contrary to Head 31
- (4) the Minister having consulted with the Commission may direct the Commission to provide an annual report in a form and manner as the Minister may specify, and the Commission shall comply with such direction .

Head 29

Request from Minister to Commission for report

To provide that -

- (1) the Minister may request the Commission to make a report to him or her on any matter relating to the functions of the Commission and the Commission shall comply with the request within such time period as is specified in the request or as may be agreed by the Minister and the Commission.

Head 30

Confidential information

To provide

- (1) for a prohibition on the disclosure, without the consent in writing of the Commission or (save where the intending discloser is the Director) the Director or except for the purposes of this Act, in the circumstances provided for in subhead (3), or as otherwise required or permitted by law, of confidential information by a member of the Commission, the Procedures Committee, or any other committee of the Commission, or by the Director, a member of staff of the Office or by a consultant, advisor or other person engaged under contract or other arrangement by the Commission.
- (2) that a person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable—
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.
- (3) That nothing in *subsection (1)* shall prevent the disclosure of information, in accordance with law, to a member of the Garda Síochána or any other person, whether within the State or otherwise, charged with the detection or investigation of an offence.
- (4) For a definition of confidential information.

Head 31

Confidentiality of certain proceedings, communications and matters

To provide

- (1) for a prohibition on the disclosure, without the consent in writing of the Commission or (save where the intending discloser is the Director) the Director or except for the purposes of this Act, or as otherwise required or permitted by law in the circumstances provided for in subhead (4), of matters referred to in subhead (2) by a member of the Commission, the Procedures Committee, or any other committee of the Commission, or by the Director, a member of staff of the Office or by a consultant, advisor or other person engaged under contract or other arrangement by the Commission.
- (2) that the matters referred to in subhead (1) are, in relation to persons who applies or who has applied or is or has been recommended for appointment to, judicial office, proceedings of the Commission and of its committees, communications to and from the Commission and its committees, communications to and from the Commission or its committees to the Minister, or any matter concerning the removal of a member of the Commission
- (3) that a person who contravenes *subhead (1)* shall be guilty of an offence and shall be liable —
 - (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.
- (4) that nothing in *subhead (1)* shall prevent the disclosure of information, in accordance with law, to a member of the Garda Síochána or any other person, whether within the State or otherwise, charged with the detection or investigation of an offence.

Head 32

Records of Commission

To provide for

- (1) the keeping of records by the Commission of all applications made to it under Head 43, and its deliberations and recommendations regarding appointments to judicial office and all expressions of interest under Head 48 and the particulars referred to in that Head.

Head 33

Judicial Appointments Commission Office

To provide

- (1) for the establishment of a Judicial Appointments Commission Office to assist the Commission in the performance of its functions.
- (2) that the Office shall be funded by moneys provided by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (3) that the Office shall be under the management and control of the Commission and subject to the direction of the Director.
- (4) For the appointment of staff by the Commission , with the consent of the Minister and with the approval of the Minister for Public Expenditure and Reform
- (5) That the terms and conditions of the service of staff shall be determined by the Commission with the consent of the Minister and the Minister for Public Expenditure and Reform
- (6) that a member of staff of the Office shall be a civil servant in the Civil Service of the State

Head 34

Director of Judicial Appointments Office

To provide

- (1) for the appointment by the Commission of the Director, following a selection process held by the Public Appointments Service

- (2) for the term of office of the Director , not to exceed 5 years and for the eligibility for reappointment of the Director subject to a maximum aggregate period of 10 years

- (3) that holding of office by the Director to be subject to terms and conditions as may be determined by the Commission with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform

Head 35

Appointment of Interim Director

To provide that

- (1) The Minister may appoint an interim Director pending the appointment of the Director by the Commission and pending that appointment the interim Director shall perform all the functions of the Director under this Act and a reference in this Act to the Director shall include a reference to the interim Director

- (2) On the appointment of the Director, the interim Director shall cease to hold office.

Head 36

Functions of Director

To provide

- (1) for the functions of the Director (which shall be to manage and control generally the staff, administration and business of the Office.)

- (2) that the Director shall be responsible to the Commission for the performance of his or her functions.

Head 37

Qualification of a judge of the District Court for appointment as a judge of the High Court

To provide that

- (1) Section 5 of the Act of 1961 is amended to provide that a judge of the District Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the High Court.

Head 38

Amendment of Act of 1961 (legal academics)

To provide

- (1) That the Act of 1961 is amended by the insertion of section 45A , the purpose of which is to provide an additional basis for qualification for appointment as a judge of the Supreme Court, the Court of Appeal , the High Court, the Circuit Court and the District Court.

- (2) That section 45A of the 1961 Act shall provide that a person who is for the time being a legal academic of not less than 12 years' standing shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court or the District Court, subject to requirements that
 - a person of such standing shall have been employed as a legal academic for a continuous period of not less than 2 years immediately before such appointment.

 - That a legal academic shall be so qualified only where at the time of appointment the legal academic is a qualified barrister (within the meaning of the Act of 2015) or a solicitor who has not been struck off the roll of solicitors (within the meaning of the Act of 2015), and who has practised as a barrister or solicitor for a continuous period of at least 4 years,

- (3) (a) that in the case of a person who is the head of a faculty immediately before the appointment referred to in subhead (2) , the requirements of that subsection shall be deemed to be satisfied if within the period of 12 months before the person's becoming the head of that faculty , he or she was either a legal academic of not less than 12 years' standing (2 of which years shall have been continuous) or the head of another faculty of not less than 4 years' standing (2 of which years shall have been continuous) , or

(b) Was the head of a faculty at a time other than immediately before the appointment referred to in subsection (2) , any period served by him or her as the head of a faculty shall , for the purposes of that subsection and subsection (2), be deemed to be a period served by him or her as a legal academic.

- (c) A head of faculty (or head of another faculty) shall be so qualified only where at the time of appointment the head is a qualified barrister

(within the meaning of the Act of 2015) or a solicitor who has not been struck off the roll of solicitors (within the meaning of the Act of 2015), and who has practised as a barrister or solicitor for a continuous period of at least 4 years

(d) any reference in this Head to be or having been the Head of a faculty, or another faculty, shall be construed as a reference to being or having been the dean, director, or other overall head of a department, school or other faculty in an educational establishment, the responsibilities of which include the carrying on of the activities referred to in subhead (4)

(4) For the purposes of this Head a 'legal academic' means a permanent member of the academic staff of an educational establishment who teaches one or more subjects in the field of law or carries out, or supervises the carrying out, of research in one or more such subjects, whether or not in conjunction with the carrying on by him or her of administrative duties relevant to that teaching, research or supervision.

(5) further provide for a definition of 'educational establishment' to include

- a. A university to which the Universities Act 1997 applies,
- b. a technological university (within the meaning of the Technological Universities Act 2018),
- c. the Honorable Society of King's Inns,
- d. the Law Society of Ireland, or".
- e. an educational establishment, equivalent to one referred to in paragraph (a), (b), (c) or (d), in a place outside the State,".

(6) In computing for the purposes of section 45A any period that a person must have served as a legal academic, successive employment of the person by two or more of any of the educational establishments mentioned in subhead (5) shall suffice.

Head 39

Amendment of the Act of 1961 (practising barrister or practice at the Bar)

To provide that

- (1) Section 5 of the Act of 1961 is amended to provide that for the purposes of that section the term 'practising barrister' has the same meaning as it has in the Legal Services Regulation Act 2015.
- (2) Section 17 of the Act of 1961 is amended to provide that for the purposes of that section the term 'practising barrister' has the same meaning as it has in the Legal Services Regulation Act 2015.
- (3) Section 29 of the Act of 1961 is amended to provide that for the purposes of that section the term 'practising barrister' has the same meaning as it has in the Legal Services Regulation Act 2015.
- (4) section 2 of the Act of 1961 is amended to provide that a reference to 'the Act of 2015' is a reference to the Legal Services Regulation Act 2015.
- (5) the Courts of Justice Act 1936 ,in section 14, and in section 51, is amended to provide that 'practising barrister' has the same meaning as it has in the Legal Services Regulation Act 2015.
- (6) section 2 of Courts Act 1973 is amended to provide for the substitution of "practice as a barrister" for "practice at the Bar" in each place it occurs."

Recommendation of names to Minister: principal conditions to be satisfied

To provide that

- (1) the Commission shall not recommend the name of a person to the Minister unless it is satisfied that the requirements of the relevant provisions are complied with in relation to the person.
- (2) in making a recommendation, the Commission shall ensure that the requirements in the published statement are complied with.
- (3) In the case of an appointment to the office of ordinary judge of the Supreme Court, the Court of Appeal or High Court, the Commission shall not recommend the name of a person to the Minister unless, in the opinion of the Commission the person has—
 - i. an appropriate knowledge of the decisions, and
 - ii. an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court, the Court of Appeal and the High Court
- (4) In the case of a person who was appointed as a judge of the High Court, the Circuit Court or the District Court before 28 October 2014, *paragraph (ii) of subhead (3)*, in so far as it refers to appropriate experience of the practice and procedure of the several courts mentioned in that provision, shall have effect as if the reference to the Court of Appeal were omitted.
- (5) In determining whether the requirements of *subhead (3)* are satisfied, the Commission shall have regard, in particular, to the nature and extent of the practice of the person concerned in so far as it relates to his or her personal conduct of proceedings in the Supreme Court, the Court of Appeal and the High Court as either or both of the following—
 - (a) an advocate or a solicitor instructing counsel in such proceedings, or both, or
 - (b) a person providing legal advice to another person on the conduct of such proceedings.”.

(6) In this section “relevant provisions”, in relation to a person, means the provisions applicable to the judicial offices of ordinary judge of the Supreme Court, Court of Appeal, High Court, Circuit Court, office of specialist judge of the Circuit Court, District Court, and the basis on which the person claims qualification for appointment to it.

Recommendation of names to Minister: further conditions to be satisfied

To provide that

- (1) the Commission shall not recommend a practicing barrister or a practicing solicitor for appointment unless he or she has displayed in his or her practice as a barrister or solicitor a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned.
- (2) The Commission shall not recommend a legal academic, in his or her role as a legal academic and also in his or her practice as a barrister or solicitor, as the case may be, a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned
- (3) The Commission shall not recommend the name of a person to the Minister for appointment to judicial office unless that person is suitable on grounds of character and temperament and is suitable on grounds of health
- (4) The Commission shall not recommend the name of a person to the Minister for appointment to judicial office unless the person gives an undertaking in writing to the Commission, if appointed to judicial office, to take such course or courses of training or education, or both, as may be required by the Chief Justice or the President of the relevant Court.

Head 42

Making of recommendations: certain functions

To provide that

- (1) the Commission shall provide through such means as it consider to be appropriate information on the selection procedures and the other matters that are set out in a published statement
- (2) the Commission shall invite , through means of advertisement, the making of applications by persons to be considered for selection for recommendation for appointment to judicial office, and
- (3) the Commission may do such other things as it considers necessary to enable it perform its function in relation to selecting persons to be the subject of a recommendation

Head 43

Applications for appointment to judicial office

To provide that

- (1) a person, including a serving judge or a relevant office holder, who wishes to be considered for appointment to a judicial office shall make an application to the Commission pursuant to an invitation made by the Commission; that application shall be in writing or in such other format as may be specified in the selection procedures, and no application shall be made otherwise than pursuant to such invitation
- (2) without prejudice to any specific provision of the selection procedures in that behalf, an applicant shall provide to the Commission such information as it may request to enable it to consider the suitability of the applicant for judicial office, including information relating to education, professional qualifications, experience and character.
- (3) In this section “relevant office holder” means a judge or other office holder referred to in any of clauses (I) to (VII) of section 5(2)(b)(i) of the Act of 1961.

Head 44

Judicial vacancy: recommendation by Commission of persons for appointment

To provide that

- (1) where a judicial office stands vacant, or the Minister anticipates that a judicial office will stand vacant, the Minister shall request the Commission to recommend to the Minister, in respect of the judicial office concerned, the names of 5 persons.
- (2) The Commission where it receives a request under this Head , shall recommend the names of 5 persons in respect of the judicial office concerned, and the Commission shall provide a statement of the name of each eligible person who had made a relevant application.

Head 45

More than one judicial vacancy: recommendation by Commission of persons for appointment

To provide that

- (1) where more than one judicial office stands vacant, or the Minister anticipates that more than one judicial office in a particular court will stand vacant, the Minister shall request the Commission to recommend to the Minister, in respect of the judicial offices concerned, in addition to 5 names, 3 more names in respect of the second and each additional vacancy or such lesser total number of names as may be requested by the Minister following consultation with the Commission
- (2) The Commission where it receives a request under this Head shall recommend the number of names of persons provided for in respect of the judicial offices concerned , and the Commission shall provide a statement of the name of each eligible person who had made a relevant application.

Head 46

Where specified number of persons' names not recommended

To provide that

- (1) Where the Commission cannot recommend to the Minister under Heads 44 and 45 the number of specified names of persons, then it shall, if it can, recommend to the Minister a lesser number of names and shall provide to the Minister a statement of the name of each eligible person who had made a relevant application.
- (2) Where subhead (1) applies it shall include a case in which the number of eligible persons who had made an application to the Commission is less than the number of names of persons required to be the subject of a recommendation.
- (3) Where the Commission cannot recommend the name of any person the Commission shall inform the Minister of that fact and it shall provide to the Minister a statement of the name of each eligible person who had made a relevant application.

Head 47

Particulars to be provided by the Commission

To provide that

- (1) the Commission shall, in respect of each eligible person , where that person has been recommended by the Commission under the foregoing provisions, provide to the Minister particulars of the person's education, professional qualifications, experience , language skills and character, and where applicable, the records and results of any interview or test conducted or held by the Commission in respect of the person.

Head 48

Appointment as Chief Justice, President of the Court of Appeal and President of the High Court

To provide that

- (1) where the judicial office of Chief Justice, President of the Court of Appeal or President of the High Court stands vacant or the Minister anticipates that any of those offices will stand vacant the Minister shall request the Commission to seek expressions of interest on the part of eligible persons who wish to be considered for appointment to such office and to forward the names of all such eligible persons to the Minister together with particulars relating to the education, professional qualifications, experience and character of those persons.
- (2) In respect of a such a request , the Minister shall convene a meeting of the Chief Justice , the lay member nominated in accordance with subhead (4), and the Attorney General, (and those persons so convened shall be known as the Senior Judicial Appointments Advisory Committee) who shall consider the suitability of all of those persons whose names have been forwarded by the Commission and shall recommend to the Government the names of 3 persons for appointment to the judicial office concerned
- (3) for substitution of the Chief Justice where the vacancy concerned is that of the judicial office of Chief Justice, by the President of the Court of Appeal, or if the President of the Court of Appeal has expressed interest , in relation to the foregoing judicial office, the next most senior judge available
- (4) for the nomination by the Commission for a term of 3 years of a lay member of the Commission for the purposes of this Head.

- (5) for the recusal of the Attorney General where the Attorney General expressed the interest in respect of a judicial office referred to in subhead (1)
- (6) that where the Committee cannot recommend to the Government the names of 3 persons, including a case in which less than 3 eligible persons expressed the interest referred to in subhead (1), then it shall, recommend to the Minister a lesser number of names and shall provide to the Minister a statement of the name of each eligible person who had made a relevant application.
- (7) That where the Committee cannot recommend the name of any person to the Government, the Commission shall inform the Government of that fact and it shall provide to the Government a statement of the name of each eligible person who expressed the interest referred to in subhead (1) .
- (8) Any decision of the Advisory Committee made under *subhead (2) or (6)* shall be a unanimous one.

HEAD 49

Provision of information by Commission to applicants

To provide that

- (1) The Commission shall notify in writing each person who made an application under Head 43, whether or not he or she was recommended to the Minister for appointment to the office.

Head 50

Statement of recommendation

To provide that

- (1) the Commission shall, in respect of each person whose name it recommends to the Minister, provide to the Minister a statement setting out the reasons the committee is of opinion that the person is suitable for appointment to the judicial office concerned.

HEAD 51

Recommended persons to be considered first

To provide that :

- (1) In advising the President in relation to the appointment of a person to a judicial office the Government shall firstly consider for appointment those persons whose names have been recommended to the Minister under Heads 44 or 45 , or the Government under Head 48, in accordance with the provisions of this Act.

HEAD 52

Recommendation by Commission of name of Commission member

To provide

(1) That a member of the Commission may be recommended to the Minister by the Commission

(2) that where a member of the Commission has made an application under head 43 in respect of a particular judicial office, that member shall take no part in the Commission's function of selecting and recommending persons for appointment to that judicial office and shall not attend any meeting of the Commission convened for the purpose of performing that function and shall not cast any vote in relation to any decision falling to be made by it for that purpose.

(3) for the substitution of a member nominated by the Judicial Council by another nominee of the Judicial Council where subhead (2) has effect .

HEAD 53

Notice of appointment to be published

To provide that

- (1) Notice of an appointment to judicial office shall be published in *Iris Oifigiúil* and the notice shall, if it be the case, include a statement that the name of the person was recommended by the Commission to the Minister under Head 44 or 45 or by the Advisory Committee to the Government under Head 48

HEAD 54

Statement to Houses of the Oireachtas

To provide

(1) That within 30 days after the end of each year, the Minister shall cause to be laid before the Houses of the Oireachtas a statement of appointments to judicial office made by the president during the previous year (not being appointments made before the commencement of this section) and that statement shall include

- The name of each appointee and the judicial office to which he or she was appointed
- Particulars of the education, professional qualifications and experience of each appointee and
- if it be the case, a statement that the name of the person was recommended by the Commission to the Minister under Head 43 or 44 or by the Advisory Committee to the Government under Head 48

HEAD 55

Preparation of published statement

To provide that

- (1) For the purposes of this Head a published statement shall contain a statement setting out selection procedures and a statement of requisite skills and attributes

- (2) the Procedures Committee shall as soon as may be after the commencement of this section and from time to time thereafter as required under the provisions of Head 56 and 57, prepare—
 - a statement setting out the selection procedures for selecting persons, and
 - a statement of requisite skills and attributes,and submit each of those statements to the Commission for its approval

- (3) The published statement may set out different selection procedures in relation to appointments to different judicial offices, and a particular judicial office where applicants already hold judicial office.

- (4) Different statements of requisite skills and attributes may be prepared by reference to different judicial offices or in the case of judicial offices in the same court, different classes of business in the court that is reasonably anticipated a particular appointee to such office would deal with.

- (5) In the preparation of the statements the Procedures Committee
 - shall consult with the President of a court where any judicial office in the court is the subject of a statement
 - may request submissions or observations within such period as is specified in the request, from any person that it considers appropriate and

- may avail itself of the advice and expertise of any consultants or advisers appointed by the Commission under Head 13.
- (6) The Committee shall consider the outcome of such consultations and such submissions or observations as are received.
- (7) “requisite skills and attributes” means skills, competencies, personal attributes and characteristics that a person must possess in order that he or she may be considered suitable for selection

Matters relating to the Statement of selection procedures.

To provide that –

- (1) In the preparation of the statement of selection procedures, the Procedures Committee shall, amongst other matters, have regard to a number of criteria including
 - (a) The critical importance of the selection procedures, in filling judicial vacancies in judicial office, to the administration of justice;
 - (b) the need for adherence to recognised best practice standards in recruitment processes for judicial and other related offices,
 - (c) the objective that the membership of the judiciary should comprise equal numbers of men and women,
 - (d) the objective that, to the extent feasible and practicable, the membership of the judiciary should reflect the diversity within the population as a whole,
 - (e) the need for selection procedures to—
 - (i) comprise comprehensive procedures, including provision for interviews and other selection tests, approaches and methods in line with the requirements of the vacancy or vacancies proposed to be filled, and
 - (ii) distinguish between applicants already holding judicial office on the one hand and applicants who do not hold judicial office on the other hand with regard to the requirements for possession of knowledge of certain matters under Head 34.
 - (f) The objective that consistent with the written statement most recently provided under Head 57 to the Procedures Committee concerning the needs of the users of the courts in that regard, the membership of the judiciary should include persons with a proficiency in the Irish language

- (g) the need for the keeping of records in relation to each step of the selection procedures undertaken and the retention of documentation supplied to the Commission in the course thereof,
- (h) the need for good standards of communication with applicants for judicial office, and the provision otherwise of a good standard of service to them in respect of applications made by them under this Act, and
- (i) the case of a statement that is not the first such statement to be prepared in by the Committee, any recommendations made under Head 60.

HEAD 57

Matters relating to the Statement of skills and attributes .

To provide that

(1) In the preparation of the statement of skills and attributes, the Committee shall, amongst other matters, have regard to—

- (a) the independence required of holders of judicial office as respects the exercise by them of their functions as holders of such office,
- (b) the critical importance of applicants for judicial office possessing a combination of—
 - knowledge of the law,
 - an ability to conduct proceedings in a manner that ensures confidence by the public in the administration of justice and to make decisions in a manner that takes account of the need for the efficient discharge of court business, and
 - an appropriate awareness of the practical considerations that affect the experience of lay persons (whether as parties to proceedings, witnesses or others having an involvement with it) of the court system,
- (c) the need for applicants for judicial office to demonstrate that they will be in a position, allowing for any appropriate training that may first be required in that behalf, to discharge judicial business in branches of the law that may not have fallen within their previous area of knowledge (as a practising barrister or solicitor, legal academic or holder of another judicial office, as the case may be), and
- (d) in the case of a statement that is not the first such statement prepared by the Committee, any recommendations made under Head 60.
- (e) The Commission shall consult with the Courts Service for the purpose of keeping under review the needs of the users of the courts with respect to proceedings being conducted in the Irish language and shall, from time to time, provide a written statement to the Procedures Committee of matters that the Commission

considers to be relevant to such needs of those users arising out of any such review and consultation.

Head 58

**Approval of statements by
Commission**

To provide

- (1) That the Commission shall approve, approve with modifications, or refuse to approve each of the statements provided for under Head 55.
- (2) That where the Commission refuses to approve the Statements , the Procedure Committee shall prepare new statements in accordance with the provisions of Head 55.
- (3) That the Commission shall consult with the Minister before exercising any of the powers under *subhead (1)*.

Head 59

Publication of judicial selection (procedures and required competencies) statement

To provide that

- (1) where the Commission approves each of the Statements submitted under Head 55, including where such approval is given subject to modifications, the Commission shall combine the statements in the one statement and publish the statement on its website, and a statement so published shall be known as a “judicial selection (procedures and required competencies) statement” (in this Act referred to as the “published statement”).
- (2) The statement shall be published within 12 months from the commencement of this section or within such greater period not exceeding 6 months from the expiry of that period as the Minister may determine.
- (3) The Commission may decide to replace the published statement and publish a replacement statement, consisting of statements submitted to it under Head 55 and for that purpose the Commission may request the Committee to perform its functions under Heads 55.

Review by Procedures Committee and recommendations

To provide that

- (1) the Procedures Committee shall monitor and review the implementation of this Act including in particular
 - the practical operation of the published statement,
 - the diversity among candidates for judicial appointment,
 - the effectiveness and application of the qualification requirements for appointment to judicial office and the requirements for selection and recommendation of persons for such appointment,
 - the effectiveness of the administrative support provided by the Office of the Commission
 - the adequacy of the functions assigned to the Commission

and shall monitor and review international developments in the selection and appointment of persons for judicial office, including any international instruments and conventions relevant to such selection and appointment.

- (2) The Procedures Committee may, or shall at the request of the Commission, commission research into qualification requirements for appointment to judicial office and the requirements for selection and recommendation of persons for such appointment.
- (3) A review under *subhead (1)* shall be conducted 2 years after the commencement of this section and thereafter, from time to time as the Commission so requests.

- (4) The Procedures Committee shall, following a review under *subhead (1)*, make a report to the Commission of its findings including any recommendations relating to the implementation of this Act including recommendations related to -
- the published statement,
 - procedures and processes for developing and strengthening diversity among candidates for judicial appointment,
 - changes to the qualification requirements for appointment to judicial office and the requirements for selection and recommendation of persons for such appointment.
 - ensuring the effectiveness of the administrative support provided by the Office to the Commission
 - the functions assigned to the Commission
- (5) The Commission shall, having considered any report and recommendations made to it under *subhead (4)*, submit the report and recommendations, together with its observations (if any) on those recommendations, to the Minister for his or her consideration

Head 61

Dissolution of Judicial Appointments Advisory Board

To provide

- (1) For the dissolution of the Judicial Appointments Advisory Board
- (2) For the transfer of records of the Judicial Appointments Advisory Board to the Commission
- (3) For the substitution in any proceedings of the Commission for the Judicial Appointments Advisory Board.

Head 62

Amendment of section 22 of the Standards in Public Office Act 2001

To provide that

- (1) the Commission shall not recommend a person for appointment to judicial office unless the person has furnished to it the documents specified in subhead (3).

- (2) The Senior Judicial Appointments Advisory Committee shall not recommend a person for appointment to judicial office unless the person has furnished to it the documents specified in subsection (3)

- (3) The Government shall not advise the President to appoint a person to a judicial office where the person was not recommended by the Commission or the Senior Judicial Appointments Advisory Committee under [the Judicial Appointments Commission Act] unless the person has furnished to the Secretary General to the Government –
 - a tax clearance certificate issued to the person not more than 18 months before the date of the recommendation or advice

 - a statutory declaration made by the person not more than 3 months before that date to the effect that, at the time of the making of the declaration, the person is, to the best of his or her knowledge and belief , in compliance with the obligations specified in subsection (1) of section 25 and that nothing in subsection (2) of that section prevents the issue to him or her of a tax clearance certificate.

Head 63

**Status of certain recommendations made by Judicial Appointments
Advisory Board**

To provide that

- (1) in respect of a recommendation made, under section 16 of the Act of 1995, by the Judicial Appointments Advisory Board before the dissolution of the Board, no appointment of the person concerned to the particular judicial office shall be made, after the dissolution of the Board under Head 61.

Head 64

Transitional provision in relation to Commission's recommendation function

To provide –

- (1) the Commission , notwithstanding Head 40, may recommend the name of a person to the Minister for appointment to a particular judicial office despite the fact that no statement is published under Head 59 , immediately before the making of the invitation under Head 42 .
- (2) the provisions of subhead (1) shall have effect during the period of 12 months referred to in Head 60 (or, if it be the case, the greater period that the Minister has determined for the purposes of that subsection)
- (3) Nothing in this section shall preclude the Commission , in a case to which *subhead (1)* applies, from indicating to applicants matters, being matters that are consistent with Heads 56 and 57 to which it shall have regard in performing the function of the selection and recommendation of persons.

Head 65

Prohibition on canvassing

To provide that –

(1) A person who has made an application under Head 43 or expressed the interest referred to in Head 48 shall not attempt, and shall not procure or counsel another to attempt, in either case whether directly or indirectly, to canvass support for the application, from any person involved in the selection or recommendation of persons for appointment and any relevant steps that may be taken in consequence of such a recommendation being made,

or influence improperly a decision of any such person ,

or otherwise interfere with or compromise the process in any way.

(2) A person who contravenes *subhead (1)* shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine.

Head 66

Service of documents

To provide that

- (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name and may be so served on or given to the person in one of the following ways:
- By delivering it in person
 - By leaving it at the address at which the person ordinarily resides , or in a case in which an address for service has been furnished, at that address or;
 - By sending it by post in a pre-paid registered letter to the address to which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.
- (2) For the purposes of this section a company formed or registered under the Companies Act 2014 or an existing company within the meaning of that Act shall be deemed to be ordinarily resident at its registered office and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.