

## Judicial Appointments Commission Bill 2020

### Summary of Regulatory Impact Analysis

Department/Office: <b>Department of Justice</b>	Title of Legislation: <b>Judicial Appointments Commission Bill (General Scheme)</b>
<b>Stage:</b> Submission to Government of General Scheme	<b>Date:</b> 11 December 2020
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<p><b>Policy context</b></p> <p>Appointments to judicial office in the State are made by the President on the advice of the Government. There was no statutory process relating to the selection, recommendation and appointment of judges until 1995 other than provisions relating to qualifications. The Courts and Court Officers Act of that year made provision for the Judicial Appointments Advisory Board, membership of which was drawn from the senior judiciary, legal professional representative bodies, lay persons and the Attorney General. Its remit was confined to appointments of practising barristers and solicitors to judicial positions, and the Act required the Board to recommend a minimum of 7 names to the Minister in respect of a judicial vacancy. Further appointment of serving judges to higher Judicial position was not comprehended by the Board process. In 2013/2014 the then Minister decided to conduct public consultations to review the appointments process in a number of regards, including considering the role of the Judicial Appointments Advisory Board. There was a significant response to this process, and an overwhelming call for wide-ranging reform. Subsequently the Minister published the Judicial Appointments Commission Bill 2017 in line with the 2016 Programme for Government. Passage through the Houses of the Oireachtas was protracted , the Dáil passing the Bill in 2018 and the Seanad in December 2019. A significant volume of amendments were pending report back to the Dáil for approval at the time of dissolution of the Dáil in January 2020. The Minister decided not to restore the Bill to the Order paper on the basis that the Bill was unviable textually and pending amendments were not in line with commitments contained in the new Government Programme and were consistent with adjustments to the Bill that the Minister</p>	

otherwise deemed to be required. On this basis the Minister is seeking the approval of the Government for a new Judicial Appointments Commission Bill (General Scheme).

What are the policy objectives being pursued?

The key policy objective is to reform the law in respect of the selection, recommendation and appointment of persons to judicial office. The General Scheme provides for the establishment of a Judicial Appointments Commission to replace the Judicial Appointments Advisory Board in line with the Government Programme commitment, to be chaired by the Chief Justice and with an equal number of judicial members (4, including the Chief Justice) and lay members (4) and the Attorney General (non-voting). Its purpose is to recommend persons to the Minister for appointment as judges. Under the Bill, the Government will receive 5 recommendations for each vacancy. Serving judges wishing to be considered for promotion to a higher court are required to apply to the Commission under the Bill.

Policy objectives include:

- developing an appointments system that includes all judicial appointments in the State made by the President on the advice to the Government. The Scheme provides that all judicial appointments, including “promotions” of serving judges, would be subject to the new Commission selection and recommendation procedures. The current JAAB process only concerns first-time judicial appointments, with no advisory role in place in respect of appointments from the ranks of serving judges. Under the Scheme the Commission will assess and deal with applications from serving judges and develop appropriate procedures for their assessment.
- developing through the Commission frameworks for modern and fit for purpose selection procedures and (judicial) skills and attributes. The Scheme provides for a mechanism (a Procedures Committee, membership of which is drawn from the Commission) to enable the Commission focus on and develop upgraded procedures and requirements for judicial office selection. The Procedures Committee will prepare and publish statements setting out selection procedures and (judicial) skills and attributes having regard to several criteria (including such matters as diversity etc.).
- to increase the degree of involvement of lay persons in the recommendation of persons for judicial appointment so as to introduce a wide range of lay expertise and knowledge in to the process. The Scheme provides for 9 members of the Commission with 4 lay members, 4 judicial members, and the Attorney General.
- to reduce to 5 the number of recommendations submitted to the Minister / Government for each judicial vacancy, as compared to the current minimum of 7 to be recommended by JAAB. Where more than one judicial vacancy arises the Scheme provides that in respect of each additional vacancy an additional 3 names will be recommended (8 names for 2 vacancies, 11 names for 3, etc.) or a lesser number that may be requested by the Minister. The Scheme provides that where the Commission cannot recommend 5 names for a vacancy a lesser number may be recommended.

- To provide a dedicated support resource to the selection and recommendation function The Scheme provides for a dedicated support office headed by a Director and staff. A new Commission is a significant organisational development and its remit will be significantly expanded compared to the JAAB.

What policy options have been considered?

OPTION 1: Do nothing.

The “do nothing” option is included for benchmarking purposes.

Public consultations carried out in 2014 revealed an effective consensus across a range of stakeholders including the senior judiciary, legal profession representative bodies, political opinion, legal academic authorities and leading civil society / NGO sector that reform of the system for judicial appointments in the State was required.

OPTION 2: Retain the Judicial Appointments Advisory Board and make some legislative adjustments to bring about improvements.

It is considered that this option would not deliver the reform of the judicial appointments system to the extent now required.

OPTION 3: Introduce new arrangements centred on a dedicated appointments body with necessary supports.

This is the preferred option as it delivers the reform of the judicial appointments process while respecting the constitutional responsibility of Government in respect of the process.

Policy options			
Option	Costs	Benefits	Impacts
1. Do nothing	<p>Reputational damage in the maintenance of an appointments system that is no longer adequate to meet modern day requirements of the courts and judicial system.</p> <p>Unacceptable position whereby the needs of a modern judicial system are potentially unmet due to the non-adoption of modern and up to date selection and competence frameworks as prerequisites to judicial appointment .</p> <p>Risks of insufficient breadth of experience and knowledge among persons charged with the function of selection and recommendation of persons for judicial appointment</p>	None	<p>A system that addresses only some judicial appointments, and does not employ modern selection approaches, which is no longer acceptable, given best practice.</p> <p>Reputation damage, domestically and internationally</p>

	having regard to experience other than judicial and legal.		
2. : Retain the Judicial Appointments Advisory Board and make some legislative adjustments to bring about improvements.	<p>Falls short of complete reform required to modernise system</p> <p>Commissions - independent bodies with statutory basis and dedicated support is the norm in modern judicial systems</p> <p>The 25 year old JAAB system was significant at the time of its inception but the statutory framework provided essentially for the 'first steps' in this area and its basis now for profound reform is entirely inadequate.</p>	<p>Minimal benefit, minor expenditures savings.</p> <p>Retention of knowledge base and experience of operating existing system, mitigated by retention of Chief Justice as Chair and outweighed by need for reform</p>	Unsatisfactory reform - an inadequate and unsuitable basis for the significant and wide-ranging reforms now required.
3. Introduce new arrangements centred on a dedicated appointments body (Judicial Appointments Advisory Commission)	<p>Cost will centre on the expenditure required to establish and maintain a new Appointments Commission.</p> <p>First full year of operation €600,000</p>	<p>A comprehensive system for the first time encompassing all judicial appointments.</p> <p>A modern, best practice internationally appointments process.</p>	A modern, reformed and fit for purpose judicial appointments system.

with necessary supports .	estimated, paid out of the Justice Vote	A new system meeting all relevant Constitutional requirements.  A professional service to support the new appointments process.	
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### **IMPACTS**

The Bill is not expected to have any negative impact on north-south and east-west relations, socially excluded or vulnerable groups, the economic market (including an impact on consumers and competition), national competitiveness and the environment. Nor will there be any new significant compliance or cost factors.

### **CONSULTATION**

Consultations on the General Scheme have taken place with the Office of the Attorney General. In addition the Department has consulted with the Courts Service with regard to the transition from the Judicial Appointments Advisory Board system, to the new system. Further consultation, as necessary is planned.

### **ENFORCEMENT AND COMPLIANCE**

[N/A for Judicial appointments functions]

### **REVIEW**

The operation of the Bill will be kept under review by the Department of Justice. Furthermore the Scheme provides (Head 5) that the operation of the legislation will be reviewed after 5 years, and additionally provides that the Commission itself must review the workings of the process within 2 years.