

SCHEME OF JUDICIAL  
APPOINTMENTS COMMISSION BILL 2016

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SCHEDULE 1

Repeals

# JUDICIAL APPOINTMENTS COMMISSION BILL 2016

AN ACT TO AMEND AND EXTEND THE COURT OFFICERS ACTS 1926 TO 1995, TO ESTABLISH A JUDICIAL APPOINTMENTS COMMISSION AND TO MAKE PROVISION IN RESPECT OF THAT COMMISSION AND TO PROVIDE FOR RELATED MATTERS

## PART 1

### PRELIMINARY AND GENERAL

#### **Head 1**

##### **Short title and commencement**

- (1) This Act may be cited as the Judicial Appointments Commission Act 2016.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions

#### **Note**

*This is a standard provision*

#### **Head 2**

##### **Interpretation**

*The “Act of 1995” means the Courts and Court Officers Act 1995, as amended*

*“the Commission” means the Judicial Appointments Commission established under section 7 of this Act*

*“the Office” means the Judicial Appointments Office established under section 19 of this Act*

*“Judicial office” means an office being the office of the Chief Justice, the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court, the President of the District Court, ordinary judge of the Supreme Court, ordinary judge of the Court of Appeal, ordinary judge of the High court, ordinary judge of the Circuit Court, or ordinary judge of the District Court [(other than the President of the District Court)]*

*“lay member” means a person appointed to be a member of the Commission other than a person who does not hold or has not held a judicial office and who is not or has not been a practising solicitor or a practising barrister or is not or has not been a law officer in the service of the State.*

*“lay person” means a person who does not hold or has not held a judicial office and who is not or has not been a practising solicitor or a practising barrister or is not or has not been a law officer in the service of the State. “Minister” means the Minister for Justice and Equality*

*“the Service” means the Public Appointments Service*

### **Note**

*This is a standard provision*

### **Head 3**

### **Repeals**

The enactments specified in the Schedule are, on the commencement of this Act, repealed to the extent specified in column 3 of that Schedule.

**Note**

*It is proposed that existing provisions relating to qualifications for appointment to judicial office (principally the Courts (Supplemental Provisions) Act 1961, the Courts and Court Officers Act 1995 and the Courts (Miscellaneous Provisions) Act 2002 as amended, are repealed and consolidated in the Bill.*

**Head 4**

**Expenses**

The expenses as may be incurred in giving effect to this enactment shall be paid out of monies provided by the Oireachtas

**Note**

*This is a standard provision*

## PART 2

### Head 5

#### **GUIDING PRINCIPLES**

The following principles shall apply in respect of the selection, in accordance with this Act, of persons for recommendation for appointment to judicial office

1. the necessity that any persons appointed to judicial office will be required to be independent in the exercise of their judicial functions and subject only to the Constitution and the law
2. the principle that any person to be appointed to judicial office should be appointed on merit
3. the objective of gender balance in the judiciary
4. the desirability that, to the extent feasible and practicable, the membership of the judiciary should reflect the diversity within the population as a whole.
5. the necessity to apply, to the greatest extent possible, best international practice and relevant international instruments and conventions relating to judicial appointments.

#### Note

*The statement of guiding principles in Statute provides an opportunity to formally provide a framework which will apply in the judicial selection process. Given the depth and breadth of views expressed in the consultations phase of the review of the judicial appointments system, it is proposed that much of this, which is focused on principles of and significant reference points for reform, is given expression in the form of guiding principles, as set out. Of course the guiding principles cannot be binding on the Government due to its constitutional prerogative in nominating persons for appointment by the President.*

*Perhaps the strongest element is the principle of judicial independence which is enshrined in Article 35.2 of the Constitution, and is a well-established principle of international law related to*



*the right to a fair trial. This Head affirms that a key principle of the judicial appointments system is the maintenance, protection and reinforcement of the independence of the judiciary .*

*It further provides that appointments to judicial office should be based on merit.*

*Many views expressed in the consultations process in 2014 were to the effect that the current selection criteria do not compare favourably with other jurisdictions which deploy transparent merit-based criteria. There is a consensus that merit should be the basis on which all judicial appointments are made. The consultations suggest that considerable research and planning is required to elaborate the criteria against which an application may be assessed. Comments suggest that the criteria prescribed currently are highly subjective and more specific criteria are needed that are more explicitly tied to the functions of a judge.*

*Other jurisdictions have developed comprehensive merit criteria to addressing such issues as ability, communications skills, work ethic, decision making capacity, intellectual capacity, integrity, objectivity, ability to listen. Awareness of diversity of communities etc. and the Commission will be tasked with developing appropriate codes of practice in relation to this matter .*

*Consultations focused on certain key benchmarks and reforms that were necessary to ensure that the judicial appointments process keeps pace with international best practice and modern day demands on the judicial system. For example, ongoing development of frameworks under international authorities (the UN, the Council of Europe, EU (PACE) and others) need to be benchmarked to underpin judicial selection particularly in the area of judicial independence.*

*Significant reference was also made to the need to develop systems to encourage diversity in judicial selection, as has been introduced in other jurisdictions. A comprehensive approach to developing policy in this area with supported research is required with reference to best practice internationally. At the international level the ENCJ (European Network of Councils for the Judiciary) - Dublin declaration on standards for the recruitment and appointment for members of the judiciary – concluded that "judicial appointments should only be based on merit and capability". The Judicial Appointments Review Committee of the judiciary notes that the*

*perception that it is increasingly difficult to attract candidates of the highest calibre to the judiciary can (at least partly) be addressed by the implicit recognition in such appointments of merit.*

*Further criteria include the need to have regard to diversity criteria and international norms and best practice.*

*Many commentators refer to guidance available at the International level as to the key tenets of judicial independence including the European Convention on Human Rights, the UN Basic Principles on the independence of the Judiciary and the Bangalore Draft Code of Judicial Conduct. The Free Legal Aid Centres and the Irish Council for Civil Liberties particularly emphasise the international dimension. The UN Basic Principles on the Independence of the Judiciary provide that persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law and where a judge is to be promoted this should be based on objective factors in particular ability, integrity and experience.*

## PART 3

### JUDICIAL APPOINTMENTS COMMISSION AND JUDICIAL APPOINTMENTS COMMISSION OFFICE

#### **Head 6**

#### **Judicial Appointments Commission**

- (1) There shall be established a body which shall be known as An Coimisiún Um Cheapacháin Breithiúnacha or in the English language the Judicial Appointments Commission (in this Act referred to as "the Commission") to perform the functions conferred on it by or under this Act.
- (2) The Minister shall, by order, appoint a day to be the establishment day of the Commission for the purposes of this Act.
- (3) The Commission shall, subject to the provisions of this Act, be independent in the performance of its functions.
- (4) The Commission shall be a body corporate with perpetual succession and an official seal and may sue or be sued in its corporate name.
- (5) The official seal of the Commission shall be authenticated by the signature of a member of the Commission.
- (6) Judicial notice shall be taken of the seal of the Commission and every document purporting to be an instrument of the Commission and to be sealed with the seal of the Commission authenticated in accordance with subhead (4) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

- (7) 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 special authorised by the Commission to act in that behalf.

### **Note**

*The purpose of this section is create a new Judicial Appointments Commission to replace the existing Judicial Appointments Advisory Board established by section 13 of the Courts and Court Officers Act, 1995, as amended.*

*The task of the new Commission will be to attend to the development of the judicial appointment selection process and also to operate a system for selection of persons for recommendation to the Government. (The elements of these two functions and how they are to be carried out are set out in Heads 10 and 11).*

*Part IV of the 1995 Act is repealed, however some provisions are reframed under the Scheme .*

### **Head 7**

#### **Membership of the Judicial Appointments Commission**

- (1) The Judicial Appointments Commission shall consist of 11 members as follows:
- a Chairperson, appointed in the manner provided under subhead (4) and
  - 10 ordinary members, who shall include the lay members to be appointed in the manner provided under subhead (5)
- (2) The members shall be
- (a) a Chairperson who shall be a lay member nominated in accordance with subhead (4)

- (b) the Chief Justice, or on nomination by the Chief Justice for the purposes of any meeting the next most senior ordinary judge for the time being of the Supreme Court who is available
- (c) (i) the President of the Court of Appeal, or  
(ii) the President of the High Court, as decided between them
- (d) The Attorney General
- (e) A practising barrister nominated by the Council of the Bar of Ireland
- (f) A practising solicitor nominated by the president for the time being of the Law Society of Ireland,
- (g) 5 lay members

(3) Where the Commission is considering the making of recommendations in relation to appointments to a particular court jurisdiction, the following shall have the right *ex-officio* to attend and participate in such meeting without having the right to vote:

- (i) one of the judges listed under 2 c. where not appointed pursuant to 2 c., or
- (ii) the President of the Court in which the vacancy arises, if different to (i)

(4) (a) The Chairperson, who shall be a lay member, shall be selected by the Service on the basis of open competition based on merit.  
(b) a person nominated as Chairperson shall only be so nominated where in the opinion of the Service that person is most suitable having regard to:

- (i) the extent of their experience in Board leadership and ensuring Board effectiveness
- (ii) the extent to which they have displayed high standards of integrity and probity; and
- (iii) the extent of their expertise and experience in the matters set out in subhead (5)

(5) (a) Lay persons for appointment as members of the Commission shall be selected by the Service on the basis of open competition based on merit

and having regard to the matters set out in subhead (7);

- (b) In selecting persons to recommend for appointment in accordance with the Section, the Service shall take account of the requirement for such persons to have expertise and/or experience in two or more of the matters set out in List A and List B being expertise and/or experience in at least one of the matters set out in List A and at least one of the matters set out in List B:

**List A**

- Experience or expertise as users of the Courts in exercising their criminal jurisdiction
- Experience or expertise as users of the Courts in exercising their civil jurisdiction
- Experience or expertise in working with or assisting victims of Crime in relation to the Courts
- Human Rights matters or equality and diversity matters
- Voluntary, community or social affairs

**List B**

- Selection processes for appointment to senior positions and the ability to adhere to the highest levels of fitness, probity and confidentiality in such processes
- The administration of justice
- Public sector policy or administration
- Board participation and corporate governance

(6) The Minister shall only appoint a lay person, including a lay chairperson nominated pursuant to subhead (2) to be members of the Commission following the passing of a resolution of each House of the Oireachtas approving such appointments.

- (7) In appointing the lay members under subhead (1), the Minister shall have regard to:
- (i) the objective of having gender balance; and

(ii) the desirability that lay members of the Commission should, to the extent feasible and practicable, reflect the diversity in the population as a whole.

(8) The term of appointment of members appointed to the Commission pursuant to subhead (2), other than judicial members, shall be 3 years renewable for one further term of 3 years.

(9) A person who is appointed to the Commission as a lay member shall cease to hold office in circumstances where he or she ceases to be a lay person.

(10) Each member of the Commission

(a) shall act on a part-time basis and on such other terms and conditions (other than the payment of remuneration and allowances for expenses) as the Government may determine, and

(b) shall be paid by the Commission such remuneration (if any) and allowances for expenses (if any) as the Minister with the consent of the Minister for Public Expenditure and Reform may from time to time determine.

**Note**

*The existing Judicial Appointments Advisory Board (JAAB) is composed of the Chief Justice, who is the chairperson, the Presidents of the Court of Appeal, the High Court, the Circuit Court and the District Court, the Attorney General, a Bar council and Law Society representative and 3 lay people, appointed by the Minister.*

*The Programme for Government specifies that:*

*“We will introduce legislation to replace the Judicial Appointments Advisory Board with a new Judicial Appointments Commission. The new structure will include a reduction in its membership, an independent chairperson selected by the Public Appointments Service and approved by an Oireachtas Committee, and a lay majority including independent people with specialist qualifications.”*

*The Head provides for a Commission of 11 members with the lay persons increased to 6 to form a majority, and which will further consist of the Chief Justice, the Presidents of the Court of Appeal or the High Court, as decided by them, the Attorney General and Law Society and Bar Council representatives.*

*Ex-officio participation: The Head also provides, importantly, for ex-officio participation (i.e. on the basis of attending and participating but without having a right to vote) by the President of the High Court or President of the Court of Appeal (where either of them is not attending the meeting as a full member) or the President of the Court in which the vacancy arises as the case may be.*

*A key theme emerging in the 2014 consultations process was that the composition of the JAAB is instrumental in determining the type of candidate recommended for appointment and there is a general view that the composition of the Board should become more open and more broadly represent of the public interest and in so far as possible a diverse community. Some submissions argued that there should be a lay member chairperson and this is the position reflected in the Programme for Government and in this Scheme.*

*In relation to lay membership it is proposed that the lay members and the lay chairperson will be appointed by the Minister following selection processes conducted by the Public Appointments Service, subject to resolutions of both Houses of the Oireachtas approving both the appointments of the lay members and the selection of Chairperson. The lay Chairperson and 5 lay members will constitute an overall majority. Subheads (4) and (5) set out the matters and requisite areas of expertise and experience on the basis of which the selection process for the Chairperson and*



*lay members respectively of the Commission will be conducted by the Public Appointments Service*

*In relation to lay expertise, determining the type of lay expertise that is required and how it is reflected in the Scheme is an extremely important policy concern and the relevant criteria in respect of the appropriate experience and knowledge are set out provisionally in this Head. This is a factor which is likely to be subject to considerable discussion in the pre legislative scrutiny and drafting phases and the intention is to keep an open mind in relation to how it is finally constructed. This includes expertise and/or experience in a lay capacity of court matters, support for victims of crime, human rights and diversity issues, voluntary, community and social affairs, selection processes, administration and corporate governance. The provision is constructed so that there are two separate lists or groups of categories of experience/expertise and a person selected by PAS for lay membership of the Commission will have to have shown credentials in at least one category from each list, The Chairperson will be selected by the PAS on the basis of a combination of the experience and expertise required for the generality of lay members and Board leadership, Board effectiveness and probity/integrity credentials.*

*Subhead (7) provides for gender balance and population diversity (the latter based on population diversity) as matters which are to be taken into account in the selection process for lay members.*

## **Head 8**

### **Procedures of Commission**

- (1) The Commission may act notwithstanding a vacancy in its membership.
- (2) The Commission shall hold such and so many meetings as may be necessary for the due fulfilment of its functions, the first meeting of the Commission to be held not more than 3 months after the establishment day, and a meeting of the Commission shall be chaired by the Chairperson.

- (3) The Commission may adopt such procedures as it thinks fit to carry out its functions under this Act, including the setting of a quorum for meetings, and shall have all such powers as are necessary or expedient for the performance of its functions, including the power -
- (a) For the purposes of complying with a code of practice adopted in accordance with Head 10, to establish committees and sub-committees and to delegate the necessary functions to such committees or sub-committees
  - (c) to enter into contracts or arrangements, and
  - (d) with the consent of the Minister, to engage consultants and advisers.
- (4) The Commission shall maintain a record of applications, deliberations and recommendations, which may not be disclosed

**Note**

*This Head allows for a situation in which an approved code of practice under Head 10 requires that a selection process or part or parts of it may require to be conducted by a sub-committee of the Commission and provides the power to the Commission to create such a committee and define its terms of reference and membership.*

**Head 9**

**Functions of the Commission**

- (1) The functions of the Commission will be

- (a) To consider and adopt codes of practice in accordance with the provisions of Head 10, relating to the identification and selection of persons suitable for appointment to judicial office
- (b) To select and recommend persons to the Minister in accordance with Part 6, and in that regard to give effect to the functions set out in Head 11.

**Note**

*This Head provides for the two functions of the Commission, as further provided under Head 10 and Head 11.*

**Head 10**

**Codes of practice function**

- (1) The Commission shall establish a committee to be known as the Judicial Appointments Procedures Committee, “The Committee” for the purposes of this section which shall consist of no more than 7 Members of the Commission, shall be chaired by a lay Member of the Commission and shall be constituted in proportion to the membership of the Commission.
- (2) The functions of the Committee shall be:
  - a. to submit for consideration and adoption by the Commission, in accordance with the provisions of this Act, draft codes of practice, setting out the practical and procedural criteria that the Commission should recommend in furtherance of the effectiveness of its functions under Head 10 and 11

- b. to support the continuous development of the relevant practice and procedure relating to the selection and recommendation of persons for appointment to judicial office as may be required from time to time; and
  - c. to submit for consideration of the Commission any such other reports, recommendations and information as the Committee considers necessary in connection with its functions under subsections (a) and (b)
- (3) The Commission shall consider any draft codes of practice submitted to it under subsection (1) and may amend such draft codes of practice prior to their submission to the Minister under subsection (4).
- (4) Before adopting any such codes of practice the Commission shall submit them in draft to the Minister for approval and the Commission shall take account, prior to adoption, of any amendments which may be requested by the Minister.
- (5) The Committee may propose codes of practice [and/or submit reports, recommendations or information] to the Commission in relation to:
- a. the effectiveness and application of eligibility criteria and the qualification requirements specified under this Act
  - b. procedures and processes for developing and strengthening diversity among candidates for judicial appointments
  - c. ensuring the effectiveness of arrangements for administrative support of the Commission
  - d. developments and best practice internationally of judicial selection processes
  - e. the experience of the implementation of measures provided for under this Act, including the effectiveness of those measures in so far as they relate to the functions and procedures of the Commission and the adequacy of functions assigned to it under this Act.
- (6) In order to give effect to its functions under this section, the Committee shall:
- a. Monitor and review the implementation of measures provided for under this Act

- b. Monitor and review developments in the area of judicial appointment policy and law under International instruments and conventions
  - c. Monitor and review developments in other jurisdictions in relation to judicial selection and appointment
  - d. Commission research in the area of judicial selection including in respect of judicial selection criteria, eligibility and qualifications
  - e. Consult with interested persons and bodies in relation to the formulation of codes of practice, guidelines and recommendations
- (7) The Committee shall, subject to the approval of the Commission, have power to advertise and to invite written submissions from interested parties in the performance of these functions and to engage the services of persons of specialist or technical expertise to assist it.
- (8) The Committee shall, as soon as may be following the entry into force of this Act, and in any case no later than 21 months following that date make a report with recommendations together with revised or new codes of practice to the Commission in relation to the matters the subject of subhead (5)(e) and the Commission, having considered such report together with any new or amended codes of practice, shall submit its report thereon with recommendations to the Minister within three months of the receipt of the Committee's report.
- (9) The review of the Committee in relation to the matters the subject of subhead (5)(e), shall be conducted with the input of external expertise and assistance in a manner subject to the approval of the Minister.
- (10) In formulating draft codes of practice for the purposes of this section, the Committee shall have regard to the following matters:
- a. The need to recognise the critical importance of the judicial selection process in the administration of justice
  - b. The use of appropriate expert and technical assistance in compiling draft codes of practice

- c. The need for compliance with recognised best practice standards in selection processes
- d. The need for codes of practice which take full account of the requirements of the Commission including as regards the membership structure of the Commission
- e. The need for comprehensive selection processes, including interviews and other selection tests, approaches and methods in line with the requirements of the positions or categories of positions proposed to be filled
- f. The need for comprehensive documentation and records in selection processes
- g. The need for good communication with and service to applicants

(11) Any code of practice adopted by the Commission in accordance with this Head shall be publicly available and be placed on the website of the Commission.

**Note**

*The purpose of this Head is to set out the functions of the new Judicial Appointments Commission and of its Judicial Appointments Practices Committee in relation to the development of codes of practice and the review of the operation of the procedures provided for in the legislation.*

*The key concept is for a new Commission which will have the dual functions of researching and devising best practice in relation to selection processes for judicial appointment on the one hand and conducting the selection processes in relation to specific appointments for recommendation to the Government. The latter function is the subject of Head 11.*

*The functions in relation to codes of practice and best practice selection processes are to be carried out via the Committee created under these provisions, which has a smaller membership than the full Commission, though proportionally representative of the Commission, and which will be able to develop its own expertise and specialisms and have access to international and other expertise, the latter from both within the public service and courts system and outside of it, make recommendations to the Commission for the adoption of codes of practice in this regard.*

*The factors which may be included within codes of practice include (non-exhaustive list):*

- *The processes to be adopted in relation to selection processes for a particular appointment or appointments to particular vacancies whether in a particular court jurisdiction(s) or generally;*
- *The application of interview processes or other selection tests or examinations to any particular selection process or processes;*
- *The use of shortlisting procedures, interviews or tests in relation to particular selection processes;*
- *The development of competency or merit models for use in any selection processes.*

*Because the Government has the Constitutional prerogative to advise the President on persons to be appointed to judicial office, it follows that the Government, through the Minister for Justice, should have a 'stake' in the codes of practice adopted by the Commission without setting out in operational detail for it what it should do. This is given expression to in the Scheme by a requirement that the Commission would provide to the Minister a draft of a code of practice for approval by the Minister which it proposes to adopt.*

*The rationale for assigning a power to the Commission to devise, via its Committee, best practice recruitment/selection processes is that considerable ongoing development of policy and procedures in respect of judicial appointments is necessary particularly in respect of the following key elements*

- *evolving a comprehensive framework of criteria for suitability for appointment given modern day demands on judges at all levels in all law settings.*
- *Research and development of other fundamental issues around selection such as the need for diversity (and in particular a thorough consideration of best practice international models) is called for consistently across the submissions received in the consultation phase.*
- *Active monitoring of the effects of the key reforms themselves contained in this legislation when enacted will be essential*
- *Significant working up of the selection procedures and process is needed.*
- *An 'oversight' function is important to ensure that the provisions relating to the actual selection processes are effective in practice*

*While the Scheme proposes key changes in how judges are appointed this needs to be supported by a longer term programme of reform to be developed by the Commission in line with international best practice and professional standards of selection. This key function is proposed to be given effect to by the creation of a single dual purpose Commission with the research and advice function given in effect to a statutory Committee of the Commission rather than any additional new separate body.*

*The key policy approach is to provide sufficient guidance in the legislation as regards what needs to be covered, procedures as between the Commission and the Committee etc. but at the same time have legislation which does not 'hard code' specific aspects of recruitment and merit and competency models so that every time they need to be evolved new primary legislation is necessary.*

*It should be noted that the judiciary (JARC) recommended that "the opportunity should be now taken to appoint a high level body to carry out research, receive submissions and within a fixed timescale to develop comprehensive detailed proposals in a structured principled and transparent way to make a radical improvement in the judicial appointments process in Ireland" The draft policies and principles which the Commission (and the Committee) must have regard to in formulating codes of practice are set out in subhead (10)*

## **Head 11**

### **Selection and Recommendation function**

- (1) In order to give effect to its function under this Head, the Commission may
  - (a) provide information on the judicial appointments procedures
  - (b) advertise for applications for judicial appointment
  - (c) consult referees concerning the suitability of applicants to the Commission
  - (d) require applicants to complete application forms and other documentation as may be determined by the Commission from time to time
  - (e) undertake testing of candidates to ensure suitability



- (f) arrange for preliminary screening of applicants for the purpose of shortlisting
- (g) arrange for the interviewing of applicants who wish to be considered by the Commission for appointment to judicial office
- (h) do such other things as the Commission considers necessary to enable it to discharge its functions in relation to the selection of persons.

(2) Codes of Practice to be adopted by the Commission under the provisions of Head 10 may provide for different requirements or arrangements in relation to selection procedures provided for under subhead (1) in so far as they relate to a person who is for the time being a serving judge.

(3) The Commission may enter into arrangements with the Service to assist it in giving effect to any of the matters provided for under subhead (1).

(4) (a) Where the holding of interviews or other selection tests is required under a code of practice adopted by the Commission in relation to a selection process for a particular post or post(s), such interviews or tests shall be conducted as part of the selection process unless a determination to the contrary has been made by the Commission [*in specific circumstances*] that interviews are not necessary.

(b) Where the Commission has made a determination under subhead (5)(a) that determination shall be drawn to the attention of the Government, together with the specific reasons for it, when the Commission recommends persons under Part 4.

**Note**

*Consultations strongly suggest that there is a need to fundamentally review the selection process and to develop comprehensive, best practice and appropriate selection procedures given the complexity and demands of the modern judicial process. Selection frameworks need to be developed in such areas as various forms of written or on-line application, comprehensive competency testing, variations of interview approaches, shortlisting processes, attributes and personality assessments. These requirements are given effect to in the*

*Scheme by the enabling provisions of Head 10 allowing the Commission to develop codes of practice in relation to these matters.*

*Subhead (1) sets out the various selection matters that the Commission may give effect to.*

*Subhead (2) empowers the Commission to vary its selection in the situation where an applicant is a serving judge. Subhead (3) enables the Commission to secure the assistance of the Public Appointment Service in the selection process.*

*Subhead (4) is a requirement, except for stated reason, for the Commission to hold interviews or other tests in relation to a selection process.*

## **Head 12**

### **Procedures or requirements to be prescribed**

(1) The Minister may, following consultation with the Commission, prescribe by way of regulations, on foot of a code or codes of practice approved in the manner provided under Head 10, for any matter set out in such code or codes having regard to the matters specified in Head 21 and the qualifications otherwise prescribed under the Heads.

(2) The Commission shall give effect to any matter provided for in regulations made under subhead (1) within a period to be specified, subject to the approval of the Minister, and shall inform the Minister of the measures taken by it to comply with said regulation.

(3) Every regulation made by the Minister under this Head shall be laid before each House of the Oireachtas as soon as may be after it is made and if a resolution annulling the regulation is passed by either such House within the next 21 days on which the House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

### **Note**

*This Head gives the Minister the power to make regulations in response to Codes of Practice etc. submitted to him or her, and a requirement for the Commission to give effect to and new procedure or matter so prescribed.*

### **Head 13**

#### **Death, retirement or resignation of member of the Commission**

(1) The senior ordinary judge of each court shall be a member of the Commission by reason of the death or retirement of the Chief Justice or President of a Court.

(2) A member of the Commission may resign from office by notice in writing addressed to the Minister and the resignation shall take effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date.

(3) The Chairperson may resign from office as Chairperson by notice in writing addressed to the Minister, but shall, unless otherwise stated in the notice, continue to hold office as a member of the Commission for the remainder of his or her term of office, and the resignation takes effect on the date the Minister receives the notice or, if a date is specified in the notice and the Minister agrees to that date, on that date.

(4) Where a member of the Commission dies, becomes disqualified for office, resigns, is removed from office or otherwise ceases to be a member, the Government may appoint a person to be a member of the Commission to fill the resultant casual vacancy, and such person shall hold office for the remainder of the term of office of the member who occasioned the casual vacancy

#### **Note:**

*Standard provision based on equivalent provisions in other legislation.*

## **Head 14**

### **Annual Report of Commission**

- (1) Not later than three months after the end of each year, the Commission shall submit to the Minister a report on its activities in the immediately preceding year.
- (2) The Commission shall ensure that an annual report contains aggregate information only and does not contain any information or matter relating to the selection process applied, or information provided or produced as part of the selection process, in respect of an identifiable individual.
- (3) On receipt of the annual report the Minister shall lay it as soon as possible before both Houses of the Oireachtas.
- (4) The Minister may after consultation with the Commission give directions to it regarding the form of a report under this section and the manner in which any matter is to be addressed in such a report.
- (5) The Minister may request the Commission to make a report on any matter within its remit from time to time.

### **Note**

*This is a standard procedure. Subhead (2) sets out the matters that must be excluded from an Annual Report.*

## **Head 15**

### **Disqualification from Office of a Member of the Commission**

- (1) A person who is a holder of judicial office shall be disqualified from and shall cease to hold office as a member of the Commission if he or she ceases to be a holder of judicial office
- (2) A person other than a holder of judicial office shall be disqualified from and shall cease to hold office as a member of the Commission if he or she:
- a. is convicted on indictment of an offence,
  - b. is convicted of an offence involving fraud or dishonesty,
  - c. in the case of a legal member who is a legal practitioner, his or her name is struck of the roll of solicitors or the roll of practising barristers, as the case may be, or, following the investigation of a complaint under Part 6 of the Legal Services Regulation Act 2015 or
  - d. if he or she—
    - I. has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
    - II. is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provisions of that Act, or
  - e. has a declaration under section 150 of the Companies Act 1990 made against him or her or is subject or is deemed to be subject to a disqualification order by virtue of Part VII of that Act.

#### **Note**

*This is a standard provision derived from the provisions in the Legal Services Regulation Act 2015.*

## **Head 16**

### **Removal of member of Commission**

- (1) The Government may, subject to this section, remove from office a member of the Commission appointed in accordance with Head 7(2) (a), (e), (f) or (g) but only where—
  - (a) one or more of the grounds referred to in subsection (2) apply
  - (b) subsections (3) to (6) have been complied with and
  - (c) no appeal against the decision of the Government under subsection (6) has been made under subsection (7) within the period specified in that subsection or, where such an appeal has been made, the High Court has affirmed the decision, and then, and only then, where a resolution is passed by both Houses of the Oireachtas calling for the member's removal from office.
  
- (2) The grounds referred to in subsection (1) are that, in the opinion of the Government, the member—
  - (a) has become incapable through ill health of effectively performing the functions of the office,
  - (b) has committed stated misbehaviour,
  - (c) has a conflict of interest of such significance that he or she should cease to hold the office, or
  - (d) is otherwise unfit to hold the office or unable to discharge its functions.
  
- (3) Where the Government proposes to remove a member pursuant to subsection (1), they shall notify the following in writing of their proposal the member concerned.

(4) A notification under subsection (3) shall include— (a) a statement of the reasons for the proposal, (b) a statement that the member concerned may, within 30 working days of the sending of the notification or such other period as the Government, having regard to the requirements of natural justice, may specify, make representations in the prescribed manner to the Government as to why the member should not be removed from office, and (c) a statement that, where no representations are received within the period specified under paragraph (b), the Government will, without further notice, proceed with the removal of the member from office in accordance with this section.

(5) In considering whether to remove a member from office, the Government shall take into account— (a) any representations made pursuant to subsection (4)(b), and (b) any other matter that the Government consider relevant for the purpose of their decision.

(6) Where, having taken into account the matters referred to in subsection (5), the Government decide to remove the member from office, they shall notify the member in writing of their decision and of the reasons for it.

(7) The member or, as the case may be may, within 30 working days of the sending of the notification under that subsection, appeal to the High Court against the decision of the Government.

(8) On hearing an appeal under subsection (7), the High Court may, as it thinks proper, either affirm or overturn the decision concerned.

**Note**

*This is a standard provision derived from similar provisions in other legislation.*

## **Head 17**

### **Accountability of Chairperson to Committee of Oireachtas**

- (1) In this Head “Committee” shall mean a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee of Public Accounts, the Committee on Members Interests of Dáil Éireann or the Committee on Members Interests of Seanad Éireann), or a sub-committee of such committee.
  
- (2) Subject to subsection (3), the Chairperson shall, at the request in writing of a Committee attend before it to give account for the functions exercised by the Commission under Heads 10 and 11.
  
- (3) The Chairperson shall not be required to give account for any matter relating to
  - a. the selection procedures applied in relation to any specific person or to any appointment or appointments to judicial office, or
  - b. any recommendation of a person or to a recommendation or recommendations for appointment to any judicial office
  - c. any deliberations of the Commission
  - d. any communications to or from the Commission

### **Note**

*This is a standard provision relating to the accountability of the Chairperson of the Commission to an Oireachtas Committee, other than specified Committees. It provides for exclusions of certain information from disclosure to a Committee.*



## **Head 18**

### **Confidentiality of communications**

All proceedings of the Commission and of its Committees and all communications to the Commission and its Committees and from the Commission to the Minister in respect of persons recommended by it for appointment to judicial office shall be confidential and shall not be disclosed except for the purposes of this Act.

#### **Note:**

*Broadly speaking Re-enactment of section 20 of the 1995 Act adjusted as required*

## **Head 19**

### **Judicial Appointments Commission Office**

- (1) On the commencement of this Act there shall stand established a Judicial Appointments Commission Office (The Office).
- (2) The Office shall be an Executive Office attached to the Judicial Appointments Commission and its purpose shall be to provide support for the functions of the Judicial Appointments Commission.
- (3) The Office shall be under the management and control of the Judicial Appointments Commission, and subject to the direction of the Director appointed under Head 20.
- (4) The Office will be provided with such financial resources as may be assigned by the Minister subject to the sanction of the Minister for Public Expenditure and Reform.
- (5) The Office shall have such staff and subject to such terms and conditions with the approval of the Minister following consultation with the Minister for Public Expenditure and Reform.
- (6) The staff of the Commission shall be responsible to the Commission.

- (7) The Office may do such other things as the Commission considers necessary to enable it to discharge its functions under the Act.

**Note**

*The Head proposes the creation of a new Office which will be attached to the new Commission to provide support. To date the Judicial Appointments Advisory Board has had no particular dedicated resource other than the service of the Courts Service CEO who acts as Secretary to the Board. In this manner, the Courts Service has provided the financial technical and administrative support to the Commission, and it has also been serviced by a dedicated website with information and applications.*

*A significant change proposed in this Head is that this arrangement would be replaced by a new resource, a Judicial Appointments Commission Office, and that resource would not be part of the Courts Service.*

*The lack of a dedicated resource is a subject of criticism in the submissions received in the consultations process. .*

*Under the Scheme, it is envisaged that the Board's role will be considerably expanded and that it will deploy a thorough selection procedure and a dedicated resource to support this, in the form of the newly established office.*

*The provisions of the Head are in general terms of a standard nature.*

**Head 20**

**Director of Judicial Appointments Commission Office**

- (1) The Commission shall appoint a person recruited in accordance with the Public Service Management (Recruitment and Appointment) Act 2004 as Director of the Office.
- (2) The Director shall hold office for such period not exceeding 5 years.

- (3) The Director shall be eligible for reappointment for a second term not exceeding 5 years.
- (4) The Director shall have the relevant experience, qualifications and training appropriate to the appointment.
- (5) The function of the Director will be to deal with all matters relating to the management and control of the Office.
- (6) The Director shall be responsible to the Judicial Appointments Commission for the performance of his or her functions.
- (7) The Director shall hold office on such terms and conditions (including those relating to remuneration, allowances and superannuation) as may be determined by the Commission with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

**Note**

*This provision relates directly to the dedicated resource provided for under Head 19 whereby the Judicial Appointments Commission Office is established to support the work of the Judicial Appointments Commission. This Head provides that a Director shall be appointed by the Minister to manage that Office. The Head makes provisions for standard arrangements.*

## PART 5

### QUALIFICATIONS AND ELIGIBILITY FOR JUDICIAL APPOINTMENT

#### **Head 21**

##### **Qualifications for appointment to judicial office**

- (1) The Commission shall not recommend the name of a person to the Minister unless
- (a) in the opinion of the Commission the person satisfies the requirements of Heads 23 to 26 as applicable
  
  - (b) (i) in the case of an appointment to the office of ordinary judge of the Supreme Court or of ordinary judge of the Court of Appeal or of ordinary judge of the High Court, has an appropriate knowledge of the decisions, and an appropriate knowledge and an appropriate experience of the practice and procedure of the Supreme Court, the Court of Appeal and the High Court
  
  - (ii) in determining whether the requirements of subparagraph (i) 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 or the Court of Appeal or the High Court whether as an advocate or as a solicitor instructing counsel in such proceedings or both.

#### **Note**

*The purpose of this Head is to establish as a fundamental requirement for consideration for appointment the essential statutory requirements restated in the Heads, relating to practise. It includes the practice and procedure and conduct of a case provisions introduced under the Courts and Court Officers Act 2002*

## **Head 22**

### **Additional requirements in relation to appointment**

- (1) The Commission shall not recommend the name of a person to the Minister unless the person
- a. Has displayed 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
  - b. Is suitable on grounds of character and temperament
  - c. Is suitable on grounds of health,
  - d. Gives an undertaking in writing to the Commission, if appointed to judicial office, to take any training or education course as may be required by the Chief Justice or President of the relevant Court as the case may be, and
  - e. Has provided the Commission with a tax clearance certificate and a declaration that all taxes, interest or penalties have been paid.

### **Note**

*A consensus emerged in the public consultations that developing a comprehensive and appropriate framework of criteria for selection is essential, given the complexity of the modern judicial process. This will require detailed analysis and research and further consultation, and powers to bring forward codes of practice in this area are provided for under Head 10.*

*The provisions of the Head are based to a large extent on the provision of the 1995 Act. In relation to subparagraph (c) relating to the requirement of a person to be suitable on grounds of health, it should be noted that the Appointments Board has for many years indicated that candidates, at least those whom it is proposed to appoint as judges, should undergo a medical examination as part of the appointment process. The Board does request evidence of such as part of the recommendation process.*

## **Head 23**

### **Qualification for appointment to the High Court, Court of Appeal or Supreme Court**

- (1) A person who is for the time being a practising barrister or a practising solicitor of not less than twelve years' standing shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.
- (2) A person of such standing will have practised for a continuous period of not less than two years immediately before such appointment.
- (3) A judge of the Circuit Court of two years standing shall be qualified for appointments as a judge of the Supreme Court, Court of Appeal or the High Court.
- (4) Service, in the case of a judge of the Circuit Court, as a judge of the District Court shall be deemed service as a judge of the Circuit Court.
- (5) A judge of the District Court who has served as such a judge for a period of not less than two years shall be qualified for appointment as a judge of the High Court
- (6) A person who
  - (i) Is or was at any time during the period of 2 years immediately before the appointment concerned –
    - a. A judge of the Court of Justice of the European Union
    - b. A judge of the General Court of the European Union
    - c. An Advocate General of the Court of Justice of the European Communities
    - d. A judge of the European Court of Human Rights
    - e. A judge of the International Court of Justice
    - f. A judge of the International Criminal Court
    - g. A judge of an international tribunal within the meaning of the International War Crime Tribunals Act 1998
  - (ii) Was a practising barrister or a practising solicitor before appointment to any of the offices referred to in subparagraph (i), shall be qualified for

and

appointment as a judge of the Supreme Court, the Court of Appeal or the High Court

### **Note**

*The Courts (Supplemental Provisions) Act 1961 provides for the qualifications for appointment to judicial office, as amended. Key amendments included the extension under the Courts and Court Officers Act, 2002 to solicitors of eligibility for appointment to the higher courts.*

*The purpose of the Head is to restate / consolidate all qualifications relating to judicial appointment, and to extend them where appropriate.*

*The existing 12 years standing requirement as a solicitor or barrister in terms of eligibility for appointment to the superior courts is qualified by a requirement that such persons must have not less than 2 years continuous practice immediately preceding appointment.*

*Amendments to the Act in 2002 rendered practising solicitors eligible for appointment to all courts and as a consequence both solicitors and barristers in legal practice for a designated number of years are eligible for appointment to each of the courts from the District Court, up to, and including, the Supreme Court. Prior to that the essential requirement remained unchanged in respect of the Supreme Court and High Court since the Courts of Justice Act 1924 which specified a practice requirement of not less than 12 years as a barrister.*

*The current qualifying practice requirement of barristers and solicitors is 12 years for appointment to the High and Supreme Court and 10 years for appointment to the District and Circuit Courts. The JARC propose that this should be raised to 15 years. However, the Law Society suggests that this should be 10 years for all courts. No particularly strong case appears to be put forward either for adjusting upwards or downwards the current requirement.*

### **Subhead (5)**

*Under the existing arrangements (Courts (Supplemental Provisions) Act 1961), as amended a judge of the District Court is qualified for appointment as a judge of the Circuit Court but is not qualified for appointment to any higher court. Under the 1961 Act, as amended by the Act of 2002, a judge of the Circuit Court must have served for not less than two years before qualifying*

*for appointment as judge of the High or Supreme Court (or Court of Appeal). This was a change from the 1961 provision introduced under the Act of 1995 whereby a Circuit Court judge had to be of four years standing .*

*The proposed change – subhead (6) making a service as a District Judge qualify as practise - was represented in submissions as very desirable to remove an unnecessary restriction on a serving District Court judge. In essence it was proposed that it should be possible to appoint a District Court Judge as a judge of the High Court, as is the case with a Circuit Court judge. It has been argued that there does not appear to be any rational basis for such exclusion given that barristers and solicitors who have been in practice for just 12 years are eligible for appointment whereas District Judges with experience spanning many years are excluded from appointment. The exclusion arises from the fact that under the Acts, District Court judges cannot qualify for appointment to the higher courts as they are not considered to be practising at the time of appointment. This is amended in subhead (5).*



## **Head 24**

### **Qualification for appointment to the Circuit Court**

- (1) A person who is for the time being a practising barrister or a practising solicitor of not less than ten years' standing shall be qualified for appointment as a judge of the Circuit Court.
- (2) A judge of the District Court shall be qualified for appointment as a judge of the Circuit Court.
- (3) Service, in the case of a barrister as a judge of the District Court shall be deemed practice at the Bar and service in the case of a solicitor as a judge of the District Court shall be deemed to be practise as a solicitor.

#### ***Note:***

*The Courts (Supplemental Provisions) Act 1961 provides for the qualifications for appointment to judicial office, as amended. The purpose of the Head is to restate the basic practice qualification relating to appointment as a judge of the Circuit Court.*

## **Head 25**

### **Qualification for appointment to the District Court**

- (1) A person who is for the time being a practising barrister or solicitor of not less than ten years' standing shall be qualified for appointment as a justice of the District Court.

## **Note**

*The Courts (Supplemental Provisions) Act 1961 provides for the qualifications for appointment to judicial office, as amended on occasion. The purpose of the Head is to restate the basic qualification relating to appointment as a judge of the District Court.*

## **Head 26**

### **Legal academic**

(1) In this Head “legal academic” means a full-time, permanent member of the academic staff of an educational establishment mentioned in subsection (2).

(2) For the purposes of subsection (1), “educational establishment” means—

- (a) the Honourable Society of King’s Inns,
- (b) the Law Society,
- (c) a university to which the Universities Act 1997 applies, and
- (d) an educational establishment providing education and training for the solicitors’ and barristers’ professions, as prescribed by the Minister on foot of recommendations made by the Authority pursuant to section 12 of the *Legal Services Regulation Act 2015*.

(3) The provisions of this Head shall only apply to a legal academic who has qualified as a barrister or as a solicitor, whether or not that person has practised as a solicitor or as a barrister.

(4) A person who is for the time being a legal academic of not less than twelve 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 or the High Court.

(5) A person of such standing will have been employed as a legal academic for a continuous period of not less than two years immediately before such appointment (4) a legal academic.

(6) The Commission shall not recommend to the Minister for appointment to judicial office a legal academic unless he or she satisfies the requirements b., c., d., and e. of Head 22 and unless he or she has displayed in his or her role as legal academic a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned.

### **Note**

*This section addresses the position of legal academics attached to recognised institutions; some contributions to the consultations process note that it was an anomaly that persons with considerable experience in such areas as teaching in the law, legal research and as authors of academic legal texts could not be considered for appointment as judges.*

*In some other jurisdictions experience as an academic in law fields in a university and similar institution is reckoned as relevant experience for the purpose of appointment to judicial office.*

## PART 6

### RECOMMENDATIONS AND APPOINTMENTS

#### **Head 27**

##### **Applications for appointment to Judicial Office**

(1) A person, including a person who is for the time being a serving judge or a judge referred to in Head 23 (6)(i) who wishes to be considered for appointment to judicial office shall apply to the Commission in writing, or in a format that the Commission may determine in accordance with a code of practice, and shall provide the Commission with such information as it may require to enable it to consider the suitability of that person for judicial office, including information relating to education, professional qualifications, experience and character.

#### **Note**

*This subhead which is an adaptation of the relevant provision of the 1995 Act provides that those wishing to be considered for appointment, including those who are serving judges, must apply to the Commission.*

*The elevation of a serving judge to a higher court is excluded from the remit of the existing Board. The position is set out in section 17 of the 1995 Act, as amended, so that it is the government which advises on the appointment of the following categories of serving judges, without reference to the Judicial Appointments Advisory Board : -*

- *a judge of the Court of Appeal*
- *a judge of the High Court,*
- *a judge of the Circuit Court*
- *a judge of the District Court*
- *a judge of the Court of Justice of the European Communities,*
- *a judge of the European Court,*  
*an Advocate-General of the Court of Justice of the European Communities,*
- *a judge of the European Court of Human Rights, and certain other judges of inter-governmental of international bodies.*

*The effect of this Head is to introduce a new provision whereby any serving judge who is so qualified may be appointed to a court following a recommendation by the new Judicial Appointments Commission.*

*Effectively a consensus across all submissions in the consultations process was the concept that serving judges should come within the remit of a new Commission recommending persons for appointments.*

## **Head 28**

### **Judicial vacancy**

Where a judicial office stands vacant, or before a vacancy in a judicial office arises, on a request made by the Minister, the Commission shall recommend to the Minister 3 persons for appointment to that judicial office.

### **Note**

The Programme for Government 2016 states as follows:

*“We will reform the judicial appointments process to ensure it is transparent, fair and credible. We will reduce the number of suitable candidates proposed by the Judicial Appointments Commission for each vacancy to the lowest number advised as constitutionally and legally permissible by the Attorney General, but in any event not more than three candidates to be shortlisted by the Judicial Appointments Commission for any vacancy.”*

*It is a requirement that Government is in a position to retain a substantive choice as part of the exercise of the executive discretion under Article 35 of the Constitution. The choice that Government must have given its role under the Constitution is satisfied by the provision whereby the Commission recommends three names.*

*Currently upon request by the Minister, the Board advertises and considers applications from persons interested in judicial office and advises the Government accordingly. The Board is required under section 16(2) of the 1995 Act to forward the names of all applicants and recommend a minimum of seven candidates to the Minister. The vast majority of views expressed in consultations, including those of the judiciary was that 3 names and no more should be submitted to the Government.*

*The Head provides for a change in the current arrangements. The proposal is that the new Commission will recommend 3 persons for appointment.*

*The Head is also intended to cover a situation in which vacancies are anticipated – e.g. due to impending retirements – and a selection process can be conducted on a preparatory basis before the vacancy occurs.*

## **Head 29**

### **More than one judicial vacancy**

Where more than one judicial office in the same court stands vacant or in advance of more than one vacancy arising in the same court, on a request made by the Minister, the Commission shall recommend 3 persons for appointment for any one of such vacancies and in respect of each additional vacancy shall recommend 2 more persons .

### **Note**

*Section 16(5) of the 1995 Act provides that where more than one judicial office in the same court stands vacant, or in advance of more than one vacancy arising in the same court, at the request of the Minister, the Commission shall submit to the Minister the name of each person who has informed it of their wish to be considered for appointment and shall recommend to the Minister*

*the names of at least seven persons in respect of each vacancy or such lesser number of names as the Minister shall specify following consultation with the Commission.*

*The Head provides a formula whereby in the case of more than one vacancy, two additional recommendations would be made by the new Commission in respect of each additional vacancy ( for example if there are 2 vacancies in a given court the Commission must recommend a minimum of 5 ; in the case of 5 court vacancies the Commission must recommend at 7) .*

### **Head 30**

#### **Where at least 3 persons are not recommended**

- (1) If the Commission cannot recommend at least 3 persons for appointment in accordance with Head 28, or where fewer than three persons inform the Commission of their wish to be considered, the Commission shall recommend to the Minister for appointment to that office such of those persons as it considers suitable for appointment and shall forward to the Minister the names of all those eligible persons who have applied.
- (2) If the Commission cannot recommend the number of persons specified under Head 28 or Head 29 in the circumstances provided for under that Head, the Commission shall recommend to the Minister for appointment such of those persons as it considers suitable for appointment and shall forward to the Minister the names of all those eligible persons who have applied.
- (3) If the Commission is not in a position to recommend any person for appointment, it shall, on making such determination, so inform the Minister and shall forward to the Minister the names of all those eligible persons who have applied.

### **Note**

*This provides that in circumstances where the requisite number of recommendations cannot be made, the Commission can still recommend such of those persons as it considers suitable for appointment.*

### **Head 31**

#### **Particulars to be provided by the Commission**

The Commission shall, in respect of each person recommended for judicial appointment, provide the Minister with particulars of the education, professional qualifications, experience and character and, where applicable, the records and results of any interview or test conducted by the Commission in respect of that person and where circumstances under Head 30 (3) arise, shall provide those particulars of all of those eligible persons who have applied.

#### **Note**

*The Head is based on the provisions of the 1995 Act and sets out the information that the Commission is required to forward to the Minister to support the Commission's recommendations*

### **Head 32**

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

(1) Where the judicial office of Chief Justice, President of the Court of Appeal or President of the High Court stands vacant, the Minister shall request the Commission to seek expressions



of interest on the part of a qualified person who wishes to be considered for appointment to such office and to forward the names of all persons expressing such interest to the Minister, along with information relating to the education, professional qualifications, experience and character of those persons.

(2) The Minister shall convene a meeting of the following persons

- The Chief Justice
- The Chairperson of the Commission
- The Attorney General
- The Minister

(to be styled “Senior Judicial Appointments Advisory Committee), which shall consider the suitability of all of those persons whose names have been forwarded by the Commission and shall recommend to the Government 3 persons for appointment to the judicial office.

### **Note**

*Currently excluded from the remit of the Board (under section 23 of the 1995 Act) are appointments to the offices of Chief Justice and Presidents of the other courts.*

*The Head proposes that such appointments will be a matter for a Committee comprising the Lay Chairperson of the Commission, the Chief Justice, the Attorney General and the Minister who will recommend three persons to the Government upon names being forwarded to that Committee by the Commission.*

### **Head 33**

#### **Statement of Recommendation**

The Commission shall in respect of each person recommended for judicial appointment provide the Minister with a Statement of Recommendation setting out the reasons the Commission are of opinion that the person recommended is suitable for appointment to judicial office.

**Note**

*The Head proposes that the Commission shall provide the Minister with a statement setting out reasons for a recommendation.*

**Head 34**

**Recommended persons to be considered first**

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 in accordance with the provisions of this Act

**Note:**

*The government cannot be constrained to only advise on the appointment of a candidate recommended by the Board. This Head therefore replicates section 16(6) of the Courts and Courts Officers Act 1995 which provides that, 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 pursuant to this section.*

**Head 35**

**Submission by Commission of name of Commission member**

- (1) The Commission may recommend a member referred to in Head 7 (b), (c) or (d) for appointment to judicial office.

(2) Where a member referred to in Head 7 (b), (c) or (d) wishes to be considered for appointment to judicial office, he or she shall withdraw from any deliberations of the Commission concerning his or her suitability for judicial office.

**Note**

*The Head is modelled on section 18 of 1995 Act. It is varied to take account of new arrangements whereby the appointment of serving judges is within the remit of the Commission under the Scheme.*

**Head 36**

**Notice of appointment to be published**

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 pursuant to this Act.

**Note**

*The Head replicates section the provisions of the 1995 Act.*

**Head 37**

**Statement to Oireachtas.**

The Minister shall cause to be laid before the Houses of the Oireachtas each year (the first year ending on a date no more than 9 months following the enactment of these measures) a statement of judicial appointments made by the President during the year indicating –

- the name of the judge,

- the particulars of the education, professional qualifications, experience and character of persons qualifications of the judge and
- an indication, if it be the case, that the person was recommended for appointment by the Commission.

**Note**

*This Head requires the Minister to report to the Oireachtas certain information relating to judicial appointments made each year.*

PART 7  
MISCELLANEOUS

**Head 38**

**Retirement age of judge of the District Court**

Section 30 of the Courts (Supplemental Provisions) Act 1961 is amended to provide that the age of retirement of a judge of the District Court shall be 70 years.

**Note**

*The purpose of this Head is to change the retirement age for judges of the District Court from 65 years to 70 years. The new retirement age of 70 years will overtake the current practice of continuing a District Court judge in office by annual warrant from the age of 65 years to 70 years. Section 30 of the Courts (Supplemental Provisions) Act 1961 provides that the age of retirement of a District Court judge shall be 65 years.*

*Section 2 of the Courts of Justice (District Court) Act 1949 provides for the continuing in office of a District Court judge by annual warrant up to the age of 70 years.*

*Section 1 of the Courts (No. 2) Act 1988 provides for the making retrospectively of a warrant under the Act of 1949.*

*Amendment of those provisions, and where necessary any transitional arrangement, to be considered by Parliamentary Counsel.*

