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**An Bille um Chomhairle na mBreithiúna, 2017**  
**Judicial Council Bill 2017**

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*Mar a tionscnaíodh*

*As initiated*

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

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*As initiated*

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Freedom of Information Act 2014 (No. 30)  
International War Crimes Tribunals Act 1998 (No. 40)  
Local Government Act 2001 (No. 37)  
Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)







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

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# Bill

*entitled*

An Act to provide for the establishment of a body to be known as *Comhairle na mBreithiúna* or, in the English language, the Judicial Council; to provide for its functions and for related matters. 5

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL 10

#### Short title and commencement

1. (1) This Act may be cited as the Judicial Council Act 2017.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 15

#### Definitions

2. In this Act—

“Board” means the Board of the Council;

“committee” means a committee of the Council, namely— 20

- (a) the Judicial Studies Committee,
- (b) the Sentencing Information Committee,
- (c) each of the Judicial Support Committees,
- (d) the Judicial Conduct Committee, or
- (e) a committee established under *section 16*; 25

“complaint” means a complaint made under *section 37*;

“complainant” means a person who makes a complaint or on whose behalf a complaint is made;

“Complaints Review Committee” means the Complaints Review Committee established under *section 42*;

“control”, in relation to a document, includes the ability to procure the document;

“co-opted member of the Board” has the meaning assigned to it by *section 12(5)*;

“Council” means the Judicial Council established by *section 6*; 5

“designated judge or designated judges”, in relation to the process for the resolution by informal means of complaints under *Chapter 4 of Part 5*, means—

- (a) in the case of an ordinary judge of the Supreme Court, the Chief Justice,
- (b) in the case of an ordinary judge of the Court of Appeal, the President of the Court of Appeal, 10
- (c) in the case of an ordinary judge of the High Court, the President of the High Court,
- (d) in the case of an ordinary judge or a specialist judge of the Circuit Court, the President of the Circuit Court,
- (e) in the case of a judge (other than the President) of the District Court, the President of the District Court, 15
- (f) in the case 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, the Chief Justice, and
- (g) in the case of the Chief Justice, the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court and the President of the District Court; 20

“document” includes—

- (a) a book, record or other written or printed material in any form (including in any electronic device), 25
- (b) a map, plan or drawing,
- (c) a disc, tape or other mechanical or electronic device in which data other than visual images are embodied so as to be capable, with or without the aid of some other mechanical or electronic equipment, of being reproduced from the disc, tape or other device, 30
- (d) a film, disc, tape or other mechanical or electronic device in which visual images are embodied as so to be capable, with or without the aid of some other mechanical or electronic equipment, of being reproduced from the film, disc, tape or other device, and
- (e) a copy of anything which falls under *paragraph (a), (b), (c) or (d)*; 35

“elected member” means—

- (a) in relation to the Board, a judge elected in accordance with *section 12(4)* to be an elected member of the Board, and

- (b) in relation to the Judicial Conduct Committee, a judge elected in accordance with *section 31(4)* to be an elected member of the Judicial Conduct Committee,  
as may be appropriate;
- “electronic device” includes any device which uses any electrical, digital, magnetic, optical, electromagnetic, biometric or photonic means, or other forms of related technology, or any combination thereof, to store or transmit data or both to store and transmit data; 5
- “establishment day” means the day appointed under *section 5*;
- “European Court of Human Rights” has the meaning it has in section 1(1) of the European Convention on Human Rights Act 2003; 10
- “*ex officio* member” means—
- (a) in relation to the Board, a judge holding one of the judicial offices specified in *section 12(2)*, and
- (b) in relation to the Judicial Conduct Committee, a judge holding one of the judicial offices specified in *section 31(2)*, 15
- as may be appropriate;
- “International Court of Justice” means the International Court of Justice established under the Charter of the United Nations;
- “International Criminal Court” means the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on 17 July 1998; 20
- “international tribunal” has the meaning it has in section 2 of the International War Crimes Tribunals Act 1998;
- “judge” means a judge of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court or the District Court;
- “judge concerned”, in relation to a complaint, has the meaning assigned to it by *section 37*; 25
- “Judicial Conduct Committee” means the committee established under *section 30*;
- “judicial misconduct” means conduct (whether an act or omission) by a judge, whether in the execution of his or her office or otherwise, and whether generally or on a particular occasion, that— 30
- (a) constitutes a departure from acknowledged standards of judicial conduct, such standards to have regard to the principles of judicial conduct referred to in *sections 7(1)(b)* and *30(2)*, and
- (b) brings the administration of justice into disrepute;
- “Judicial Studies Committee” means the committee established under *section 17*; 35
- “Judicial Support Committees” means the committees established under *section 19*;
- “lay member” means—

- (a) in relation to the Judicial Conduct Committee, a person appointed under *section 31(5)* to be a lay member of that Committee, and
  - (b) in relation to a panel of inquiry, a person appointed under *section 54(1)(b)* to be a lay member of that panel of inquiry,
- as may be appropriate; 5
- “local authority” has the meaning it has in the Local Government Act 2001;
- “Minister” means the Minister for Justice and Equality;
- “panel of inquiry” means a panel of inquiry comprising the persons who are appointed as members of the panel of inquiry under *section 54* to perform the functions conferred on a panel of inquiry by this Act; 10
- “Registrar”, in relation to the Judicial Conduct Committee, has the meaning assigned to it by *section 36*;
- “registrar to a panel of inquiry” has the meaning assigned to it by *section 54(7)*;
- “Secretary”, in relation to the Council, has the meaning assigned to it by *section 21*;
- “Sentencing Information Committee” means the committee established under *section 18*. 15

### **Repeals**

3. The following provisions are repealed:
- (a) section 21 of the Courts of Justice (District Court) Act 1946;
  - (b) sections 10(4) and 36(2) of the Courts (Supplemental Provisions) Act 1961;
  - (c) section 48 of the Courts and Court Officers Act 1995. 20

### **Expenses**

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

## PART 2 25

### JUDICIAL COUNCIL

#### **Establishment day**

5. The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act.

#### **Establishment of Council 30**

6. (1) There shall stand established on the establishment day, a body which shall be known as Comhairle na mBreithiúna or, in the English language, the Judicial Council (in this Act referred to as the “Council”) to perform the functions conferred on it by this Act.

- (2) The Council shall, subject to the provisions of this Act, be independent in the performance of its functions.
- (3) The Council 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 approval of the Minister for Public Expenditure and Reform, have power to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property. 5
- (4) The Council shall have a seal and the seal shall be authenticated by the signatures of— 10
- (a) the chairperson of the Council or another member of the Council authorised by it to act in that behalf, and
- (b) the Secretary or another member of the staff of the Council authorised by it to act in that behalf.
- (5) Judicial notice shall be taken of the seal of the Council and every document purporting— 15
- (a) to be an instrument made by the Council, and
- (b) to be sealed with the seal of the Council authenticated in accordance with *subsection (4)*,
- shall be received in evidence and be deemed to be such an instrument without further proof, unless the contrary is shown. 20

### **Functions of Council**

7. (1) The functions of the Council shall be to promote and maintain—
- (a) excellence in the exercise by judges of their judicial functions,
- (b) high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts, 25
- (c) the effective and efficient use of resources made available to judges for the purposes of the exercise of their functions, 30
- (d) continuing education of judges,
- (e) respect for the independence of the judiciary, and
- (f) public confidence in the judiciary and the administration of justice.
- (2) Without prejudice to the generality of *subsection (1)*, the Council shall— 35
- (a) review a proposal, report or recommendation submitted to it by the Board under *section 11(1)(c)*,
- (b) consider a matter referred to it by a committee under *section 16(5)*,

- (c) if appropriate, make decisions in relation to a proposal, report or recommendation referred to in *paragraph (a)* or a matter referred to in *paragraph (b)*,
- (d) adopt—
  - (i) guidelines concerning judicial conduct and ethics prepared and submitted to the Board by the Judicial Conduct Committee under *section 30(3)(d)* with the modifications (if any) made by the Board under *section 11(1)(d)*, or 5
  - (ii) amendments to guidelines concerning judicial conduct and ethics so prepared and submitted under *section 30(3)(e)* with the modifications (if any) made by the Board under *section 11(1)(d)*,

as soon as practicable, and in any event not later than 12 months, after such submission, 10
- (e) develop and manage schemes for the education and training of judges,
- (f) prepare and disseminate information and materials among judges for their use in the exercise of their functions,
- (g) subject to *section 18*, promote an understanding of sentencing principles and practice among judges and persons other than judges in such manner as it considers appropriate, 15
- (h) establish, maintain and improve communication with—
  - (i) bodies representing judges appointed to courts of places other than the State, and 20
  - (ii) international bodies representing judges, and
  - (i) assist with the provision of support to judges generally.
- (3) The Council shall have all such powers as are necessary or expedient for the performance of its functions, including the power— 25
  - (a) to establish committees in accordance with this Act,
  - (b) to delegate any of its functions to a committee,
  - (c) to enter into contracts or arrangements, and
  - (d) exercisable only with the consent of the Minister, to engage consultants.
- (4) Notwithstanding any other provision of this Act, the functions referred to in *paragraphs (a) to (d)* of *subsection (2)* shall not be— 30
  - (a) performed by the Board on behalf of the Council,
  - (b) delegated to a committee, or
  - (c) otherwise performed by any person other than the Council.

## **Membership of Council**

35

8. (1) The Council shall comprise the following members:

- (a) the Chief Justice and the ordinary judges of the Supreme Court;
  - (b) the President of the Court of Appeal and the ordinary judges of the Court of Appeal;
  - (c) the President of the High Court and the ordinary judges of the High Court;
  - (d) the President of the Circuit Court and the ordinary judges and specialist judges of the Circuit Court; 5
  - (e) the President of the District Court and the judges of the District Court other than the President of that Court.
- (2) Subject to *section 9(5)*, the Council may act notwithstanding one or more vacancies in its membership. 10
- (3) When a member of the Council ceases to be a judge, he or she shall thereupon cease to be a member of the Council.
- (4) The Chief Justice shall be the chairperson of the Council and the President of the Court of Appeal shall be its vice-chairperson.

**Meetings and procedures of Council** 15

9. (1) The Council shall hold such and so many meetings as may be necessary for the performance of its functions but in each year shall hold at least one meeting.
- (2) The first meeting of the Council shall be held not later than 3 months after the establishment day.
- (3) At a meeting of the Council— 20
- (a) the chairperson of the Council shall, if present, be the chairperson of the meeting,
  - (b) if and so long as the chairperson of the Council is not present, or if the office of chairperson of the Council is vacant, the vice-chairperson of the Council shall be the chairperson of the meeting, and
  - (c) if and so long as neither the chairperson nor the vice-chairperson of the Council is present, or if the offices of chairperson and vice-chairperson of the Council are vacant, the next most senior judge present shall be the chairperson of the meeting. 25
- (4) Every question at a meeting of the Council shall be determined by a majority of the votes of the members of the Council present and voting on the question and, in the case of an equal division of the votes, the chairperson of the meeting shall have a second or casting vote. 30
- (5) The quorum for a meeting of the Council shall be—
- (a) not less than half of the total number of its members, and
  - (b) not less than one-quarter, or such greater proportion as the Council may determine, of the total number of members of each Court, namely, the Supreme Court, the Court of Appeal, the High Court, the Circuit Court and the District Court, rounded up to the nearest whole number. 35

- (6) For the purposes of *subsection (5)(b)*, the members of each Court shall not include *ex officio* members of that Court.
- (7) Subject to this Act, the Council may regulate its own procedures.
- (8) A member of the Council may, in such form and manner as may be determined by the Council in accordance with *subsection (7)*, designate another member of the Council to vote as his or her proxy at a meeting of the Council. 5

PART 3

BOARD AND COMMITTEES OF COUNCIL

**Board of Council**

- 10. (1) There shall be a Board of the Council (in this Act referred to as the “Board”). 10
- (2) At the first meeting of the Council, the election of the first elected members of the Board shall take place in accordance with *section 12(4)*.
- (3) Subject to this Act, the Board may regulate its own procedures.

**Functions of Board**

- 11. (1) Subject to *section 7(4)*, the functions of the Council shall be performed by the Board on behalf of the Council in accordance with such directions (if any) as the Council may give to the Board and, without prejudice to the generality of the foregoing, the Board— 15
  - (a) shall consider and determine policy in relation to the performance of those functions, 20
  - (b) shall oversee the implementation of that policy by the Secretary,
  - (c) may of its own volition submit a proposal, report or recommendation to the Council in relation to any of the functions of the Council and shall do so upon a request from the Council in relation to any of those functions or any other matter,
  - (d) shall review— 25
    - (i) draft guidelines concerning judicial conduct and ethics prepared by the Judicial Conduct Committee and submitted by it to the Board under *section 30(3)(d)*, and
    - (ii) draft amendments to guidelines concerning judicial conduct and ethics prepared by that Committee and submitted by it to the Board under *section 30(3)(e)*, 30
 and may make such modifications to those draft guidelines, or draft amendments to such guidelines, as it considers appropriate.
- (2) The Board shall have all such powers as are necessary or expedient for the performance of its functions, including the power to— 35
  - (a) delegate such of its functions as it considers appropriate to the Secretary, and



- (b) refer any matter to a committee for its consideration.
- (3) The Board may perform any of its functions through or by any member of the staff of the Council duly authorised in that behalf by the Board.

**Membership of Board**

- 12. (1) The Board shall comprise the following 11 members: 5
  - (a) the *ex officio* members specified in *subsection (2)* or their replacements nominated under *subsection (3)*;
  - (b) the members elected under *subsection (4)*;
  - (c) the co-opted member co-opted under *subsection (5)*.
- (2) Each of the following shall, *ex officio*, be a member of the Board (in this Act referred to as an “*ex officio* member of the Board”): 10
  - (a) the Chief Justice, who shall act as chairperson of the Board;
  - (b) the President of the Court of Appeal;
  - (c) the President of the High Court;
  - (d) the President of the Circuit Court; 15
  - (e) the President of the District Court.
- (3) An *ex officio* member of the Board may from time to time nominate in writing another judge (other than an elected member of the Board or a co-opted member of the Board) of the court of which he or she is Chief Justice or President, as the case may be, to perform the functions of such *ex officio* member during such period or on such occasion or occasions as are specified in the nomination. 20
- (4) Each of the following shall be a member of the Board (in this Act referred to as an “elected member of the Board”):
  - (a) a judge of the Supreme Court elected by the ordinary judges of that Court;
  - (b) a judge of the Court of Appeal elected by the ordinary judges of that Court; 25
  - (c) a judge of the High Court elected by the ordinary judges of that Court;
  - (d) a judge of the Circuit Court elected by the ordinary judges and specialist judges of that Court;
  - (e) a judge of the District Court elected by the judges, other than the President, of that Court. 30
- (5) 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 and the judges elected under *subsection (4)* shall, in accordance with *subsection (6)*, co-opt a judge of the Supreme Court, the Court of Appeal, the High Court, the Circuit Court or the District Court to be a member of the Board, and a judge so co-opted shall be a member of the Board (in this Act referred to as a “co-opted member of the Board”). 35
- (6) (a) A judge who is to be a co-opted member of the Board under *subsection (5)* shall be co-opted from among the judges of each of the courts (other than the Chief

Justice or the President of a court) in rotation beginning with the Supreme Court and followed in turn by the Court of Appeal, the High Court, the Circuit Court and the District Court.

- (b) The sequence of the rotation of courts for the purposes of the co-option of a co-opted member of the Board provided for in *paragraph (a)* shall be repeated from time to time as occasion requires. 5

### **Term of membership of Board**

13. (1) A nomination under *section 12(3)* shall—

(a) cease to have effect upon—

- (i) the expiration of the period or the passing of the occasion or occasions, as the case may be, specified in the nomination, or 10
- (ii) the rescinding of the nomination by the *ex officio* member of the Board who made the nomination,

(b) where the *ex officio* member of the Board who made the nomination ceases to hold the judicial office by virtue of which he or she became such *ex officio* member, cease to have effect upon that *ex officio* member ceasing to hold that office, 15

(c) where the judge in respect of whom the nomination was made ceases to hold the judicial office by virtue of which he or she was so nominated, cease to have effect upon his or her ceasing to hold that office, or 20

(d) where the judge in respect of whom the nomination was made by notice in writing given or sent to the *ex officio* member of the Board indicates that he or she does not wish to continue to perform the functions concerned, cease to have effect upon the receipt of that notice by that *ex officio* member.

(2) Subject to *subsection (7)* and *section 14(3)*, an elected member of the Board shall serve as a member of the Board for a term of 4 years from the date of his or her election. 25

(3) Subject to *subsection (7)* and *section 14(4)*, a co-opted member of the Board shall serve as a member of the Board for a term commencing on his or her co-option and expiring on the same day as the term of membership of the elected members of the Board expires. 30

(4) Subject to *subsection (5)*, an elected member of the Board whose term of membership expires with the passage of time shall be eligible for re-election to the Board for a further term of 4 years.

(5) An elected member of the Board who has served 2 terms of membership shall not be eligible to serve a further term as an elected member of the Board other than in accordance with *subsection (6)*. 35

(6) An elected member of the Board who has served 2 terms of membership shall be eligible for re-election to the Board after a period of 4 years has elapsed immediately following the expiration of his or her most recent term of membership of the Board. 40

- (7) An elected member of the Board or a co-opted member of the Board may resign from his or her membership by notice in writing given or sent to the chairperson of the Board or, if appropriate, the judge nominated by him or her under *section 12(3)* and the resignation shall take effect on the day on which the chairperson or his or her nominated replacement, as may be appropriate, receives the notice. 5
- (8) Where an elected member of the Board or a co-opted member of the Board ceases to hold the judicial office by virtue of which he or she was eligible to become a member of the Board, he or she shall thereupon cease to be a member of the Board.
- (9) The Board may act notwithstanding one or more vacancies in its membership.

**Casual vacancies in membership of Board** 10

- 14. (1) Where an elected member of the Board dies, retires or resigns from judicial office, resigns from membership of the Board in accordance with *subsection (7)* of *section 13* or ceases to be a member of the Board in accordance with *subsection (8)* of that section, the vacancy so occasioned shall be filled by a judge elected to be a member of the Board in the same manner as the member of the Board who occasioned the vacancy was elected. 15
- (2) Where a co-opted member of the Board dies, retires or resigns from judicial office, resigns from membership of the Board in accordance with *subsection (7)* of *section 13* or ceases to be a member of the Board in accordance with *subsection (8)* of that section, the vacancy so occasioned shall be filled by a judge co-opted to be a member of the Board in the same manner as the member of the Board who occasioned the vacancy was co-opted and who is a judge of the court of which the member of the Board who occasioned the vacancy was a judge. 20
- (3) The term of office of an elected member of the Board elected in accordance with *subsection (1)* shall be for the unexpired period of the term of membership of the member of the Board whom he or she has replaced. 25
- (4) The term of office of a co-opted member of the Board co-opted in accordance with *subsection (2)* shall be for the unexpired period of the term of membership of the member of the Board whom he or she has replaced.
- (5) A term of membership of the Board of any duration resulting from an election in accordance with *subsection (1)* shall be regarded as a term of membership for the purposes of *subsections (5) and (6)* of *section 13*. 30

**Meetings and procedures of Board**

- 15. (1) The Board shall hold such and so many meetings as may be necessary for the performance of its functions but in each year shall hold not less than 4 meetings and the interval between meetings shall not be longer than 4 months. 35
- (2) The first meeting of the members of the Board shall be held within one month of the first meeting of the Council.
- (3) At a meeting of the Board—
  - (a) the chairperson of the Board or, if appropriate, the judge nominated by him or her under *section 12(3)* shall, if present, be the chairperson of the meeting, or 40

- (b) if and so long as the chairperson of the Board or, if appropriate, the judge nominated by him or her under *section 12(3)* is not present, the next most senior judge present shall be the chairperson of the meeting.
- (4) Every question at a meeting of the Board shall be determined by a majority of the votes of the members of the Board present and voting on the question and, in the case of an equal division of the votes, the chairperson of the meeting shall have a second or casting vote. 5
- (5) The quorum for a meeting of the Board shall be 6 or such greater number as the Board may determine.

**Committees of Council** 10

- 16. (1) The Council may, in addition to the committees established under *sections 17, 18, 19 and 30*, establish such and so many other committees as it thinks fit to assist and advise it in the performance of its functions.
- (2) (a) A committee established by the Council under this section shall have such functions as the Council considers appropriate. 15
- (b) The Council may at any time dissolve a committee established by it under this section.
- (3) The members of a committee, other than a Judicial Support Committee, may be appointed by the Council for such period, and subject to such terms and conditions, as the Council considers appropriate. 20
- (4) The Council may appoint to a committee, other than a Judicial Support Committee, persons who are not members of the Council but who have, in the opinion of the Council, special knowledge of or experience in matters related to the functions of the committee.
- (5) A committee may refer any matter to the Council or the Board for consideration by the Council or the Board, as the case may be. 25
- (6) The acts of a committee shall be subject to confirmation by the Council, unless the Council, at any time, dispenses with the necessity for such confirmation.
- (7) A committee shall, at least once in each year or upon the request of the Council, report in writing to the Council and the Board on the activities of the committee. 30
- (8) Subject to this Act, the Council may regulate the procedures of a committee but, subject to the foregoing, a committee may regulate its own procedures.
- (9) A committee may act notwithstanding one or more vacancies in its membership.
- (10) This section shall not apply to the Judicial Conduct Committee.

**Judicial Studies Committee** 35

- 17. (1) The Council shall establish a committee to be known as the Judicial Studies Committee.

- (2) Subject to such directions (if any) as the Council may give to it, the function of the Judicial Studies Committee shall be to facilitate the continuing education and training of judges with regard to their functions.
- (3) Without prejudice to the generality of *subsection (2)*, the Judicial Studies Committee may— 5
  - (a) prepare and distribute relevant materials to judges,
  - (b) publish material relevant to its function,
  - (c) provide or assist in the provision of education and training on matters relevant to the exercise by judges of their functions, including but not limited to information technology, 10
  - (d) establish, maintain and improve communication with—
    - (i) bodies representing judges appointed to courts of places other than the State, and
    - (ii) international bodies representing judges.

**Sentencing Information Committee** 15

- 18.** (1) The Council shall establish a committee to be known as the Sentencing Information Committee.
- (2) Subject to this section and such directions (if any) as the Council may give to it, the function of the Sentencing Information Committee shall be to—
    - (a) collate, in such manner as it considers appropriate, information on sentences imposed by the courts, and 20
    - (b) disseminate that information from time to time to judges and persons other than judges.
  - (3) The Sentencing Information Committee, and any person authorised by it to act on its behalf, may, for the purpose of performing its function, make arrangements with the Courts Service to— 25
    - (a) have access to court documents relating to criminal proceedings, and
    - (b) take and retain copies of such documents.
  - (4) Without prejudice to the generality of *subsection (2)*, the Sentencing Information Committee may— 30
    - (a) collate information on decisions of the courts relating to sentences,
    - (b) conduct research on sentences imposed by the courts,
    - (c) disseminate decisions of the courts relating to sentences,
    - (d) prepare and disseminate information on such decisions and other materials relevant to its function, and 35
    - (e) organise conferences, seminars and meetings relevant to its function.

- (5) Any information disseminated under *subsection (4)* shall not disclose the names of the parties to the proceedings concerned that are the subject of the decisions of the courts concerned or the identity of any person who is named in, or is identifiable from, a document referred to in *subsection (3)* that is used for the purposes of *subsection (4)* except where such disclosure is required— 5
- (a) by a judge for the purposes of the exercise of his or her judicial functions in proceedings before him or her, or
- (b) pursuant to an order of a court under *subsection (6)*.
- (6) A court may, on application in that behalf, in any criminal proceedings, if it considers that it is necessary in the interests of justice to do so, order that the requirement in *subsection (5)* not to disclose the names of parties to proceedings shall not apply in relation to specified decisions of the courts for the purposes of submissions to the court in relation to the sentence to be imposed in those proceedings and the determination by the court of that sentence. 10
- (7) An order of a court under *subsection (6)* shall be limited in its effect to any barrister or solicitor representing a party to the proceedings concerned. 15
- (8) In this section—
- (a) references to a sentence shall include references to any order or decision of a court consequent on a conviction for an offence or a finding of guilt in respect of an offence, and 20
- (b) references to information shall include references to information in electronic or other forms.

### **Judicial Support Committees**

- 19.** (1) The Council shall establish the following committees (referred to in this Act as the “Judicial Support Committees”): 25
- (a) a committee to be known as the Supreme Court Judicial Support Committee comprised of the following members:
- (i) the Chief Justice who shall, *ex officio*, be a member of the Committee or his or her replacement nominated under *subsection (3)*;
- (ii) an ordinary judge of the Supreme Court elected by the ordinary judges of that Court; 30
- (b) a committee to be known as the Court of Appeal Judicial Support Committee comprised of the following members:
- (i) the President of the Court of Appeal who shall, *ex officio*, be a member of the Committee or his or her replacement nominated under *subsection (3)*; 35
- (ii) an ordinary judge of the Court of Appeal elected by the ordinary judges of that Court;
- (c) a committee to be known as the High Court Judicial Support Committee comprised of the following members:

- (i) the President of the High Court who shall, *ex officio*, be a member of the Committee or his or her replacement nominated under *subsection (3)*;
  - (ii) two ordinary judges of the High Court elected by the ordinary judges of that Court;
- (d) a committee to be known as the Circuit Court Judicial Support Committee 5  
 comprised of the following members:
  - (i) the President of the Circuit Court who shall, *ex officio*, be a member of the Committee or his or her replacement nominated under *subsection (3)*;
  - (ii) two other judges of the Circuit Court elected by the ordinary judges and the specialist judges of that Court; 10
- (e) a committee to be known as the District Court Judicial Support Committee  
 comprised of the following members:
  - (i) the President of the District Court who shall, *ex officio*, be a member of the Committee or his or her replacement nominated under *subsection (3)*;
  - (ii) two other judges of the District Court elected by the judges, other than the President, of that Court. 15
- (2) The function of a Judicial Support Committee shall be to advise and assist the Council in the performance of its functions under this Act insofar as matters relevant to the Court to which the Committee relates are concerned.
- (3) The *ex officio* member of a Judicial Support Committee may from time to time 20  
 nominate in writing another judge of the court of which he or she is Chief Justice or President, as the case may be, to perform the functions of that *ex officio* member of the Judicial Support Committee concerned during such period or on such occasion or occasions as are specified in the nomination.
- (4) A nomination under *subsection (3)* shall— 25
  - (a) cease to have effect upon—
    - (i) the expiration of the period or the passing of the occasion or occasions, as the case may be, specified in the nomination, or
    - (ii) the rescinding of the nomination by the *ex officio* member of the Judicial Support Committee concerned who made the nomination, 30
  - (b) where the *ex officio* member of the Judicial Support Committee concerned who made the nomination ceases to hold the judicial office by virtue of which he or she became such *ex officio* member, cease to have effect upon that *ex officio* member ceasing to hold that office,
  - (c) where the judge in respect of whom the nomination was made ceases to hold the 35  
 judicial office by virtue of which he or she was so nominated, cease to have effect upon his or her ceasing to hold that office, or
  - (d) where the judge in respect of whom the nomination was made by notice in writing given or sent to the *ex officio* member of the Judicial Support Committee concerned indicates that he or she does not wish to continue to perform the 40

functions concerned, cease to have effect upon the receipt of that notice by that *ex officio* member.

- (5) A member of a Judicial Support Committee, who is elected as such a member under *paragraph (a)(ii), (b)(ii), (c)(ii), (d)(ii) or (e)(ii)*, as may be appropriate, of *subsection (1)* (in this section referred to as an “elected member of a Judicial Support Committee”), shall serve as a member of the Judicial Support Committee concerned for a term of 4 years from the date of his or her election. 5
- (6) Subject to *subsection (7)*, an elected member of a Judicial Support Committee whose term of membership expires with the passage of time shall be eligible for membership of the Judicial Support Committee concerned for a further term of 4 years. 10
- (7) An elected member of a Judicial Support Committee who has served 2 terms as a member of the Judicial Support Committee concerned shall not be eligible for membership of that Committee other than in accordance with *subsection (8)*.
- (8) An elected member of a Judicial Support Committee who has served 2 terms as a member of the Judicial Support Committee concerned shall be eligible for membership of that Committee after a period of 4 years has elapsed immediately following the expiration of his or her most recent term of membership of that Committee. 15
- (9) An elected member of a Judicial Support Committee may resign from membership of the Judicial Support Committee concerned by notice in writing given or sent to the *ex officio* member of that Judicial Support Committee or his or her replacement nominated under *subsection (3)*, as the case may be, and the resignation shall take effect on the day on which the *ex officio* member or his or her nominated replacement, as may be appropriate, receives the notice. 20
- (10) Where an elected member of a Judicial Support Committee ceases to hold the judicial office that he or she held when he or she became a member of the Judicial Support Committee concerned, he or she shall thereupon cease to be a member of that Committee. 25
- (11) Where an elected member of a Judicial Support Committee dies, retires or resigns from judicial office, resigns from membership in accordance with *subsection (9)* or ceases to be a member under *subsection (10)*, the vacancy in the Judicial Support Committee concerned so occasioned shall be filled by a judge elected to be a member of that Judicial Support Committee in the same manner as the member of that Committee who occasioned the vacancy was elected. 30
- (12) A member of a Judicial Support Committee elected in accordance with *subsection (11)* shall serve as a member of the Judicial Support Committee concerned for the unexpired portion of the term of membership of the member whom he or she has replaced. 35
- (13) A term of membership of any duration of a Judicial Support Committee resulting from an election in accordance with *subsection (11)* shall be reckoned as a term of membership for the purposes of *subsections (7) and (8)*. 40

## **Remuneration and expenses of members of Board and committees**

- 20.** (1) Each member of—



- (a) the Board, or
- (b) a committee other than the Judicial Conduct Committee,

who is a judge shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.

- (2) Each member, other than one who is a judge, of a committee other than the Judicial Conduct Committee shall be paid such remuneration (if any) and such allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine. 5

## PART 4

### STAFF, FUNDING AND ACCOUNTABILITY OF COUNCIL

10

#### **Secretary to Council**

- 21. (1) The Board shall appoint a person to be the Secretary to the Council (in this Act referred to as the “Secretary”).
- (2) The Secretary may be removed or suspended from office by the Board for stated reasons. 15
- (3) The Secretary shall hold office under a written contract of service (which contract may, at the discretion of the Board, be renewed) for such period as is specified in the contract and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) as are so specified, as may be determined by the Board with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform. 20
- (4) The Secretary shall not be a member of the Council, the Board or a committee but he or she may, in accordance with procedures specified by the Council, the Board or a committee other than the Judicial Conduct Committee, attend meetings of the Council, the Board or the committee concerned, as the case may be, and shall be entitled to speak and give advice at such meetings. 25
- (5) The Public Service Management (Recruitment and Appointments) Act 2004 shall not apply to the appointment of a person as the Secretary.

#### **Functions of Secretary to Council**

- 22. (1) The Secretary shall, in addition to the functions assigned to him or her by or under any other provision of this Act, manage and control the staff of the Council and the administration of the Council (and its committees) and perform such other functions (if any) as may be determined by the Board. 30
- (2) The Secretary shall perform the functions referred to in *subsection (1)* (other than those of Registrar to the Judicial Conduct Committee) in accordance with such directions as may be given to him or her from time to time by the Board and shall be accountable to the Board for the performance of those functions and the effective and efficient management of the Council. 35

- (3) The Secretary shall provide to the Board such information in relation to the performance of his or her functions referred to in *subsection (2)* (including information with respect to the performance of those functions in so far as they relate to the financial affairs of the Council) as the Board may require.
- (4) The Secretary may, with the consent of the Board, authorise a member of the staff of the Council to perform a specified function of the Secretary and such a member of the staff so authorised may perform the function accordingly. 5
- (5) The Board may designate a member of the staff of the Council to perform the functions of Secretary in the absence of the Secretary or where the office of Secretary is vacant, and a member of the staff of the Council so designated shall in such absence or upon such office being vacant, perform those functions. 10

**Staff of Council**

- 23. (1) The Board shall, with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of the Council as it may determine. 15
- (2) A member of staff of the Council shall be a civil servant in the Civil Service of the State.
- (3) The Board shall be the appropriate authority (within the meaning of the Public Service Management (Recruitment and Appointments) Act 2004 and the Civil Service Regulation Acts 1956 to 2005) in relation to members of the staff of the Council. 20
- (4) For the purposes of this section, the Secretary is not a member of the staff of the Council.

**Advances to Council**

- 24. The Minister shall from time to time advance to the Council out of moneys provided by the Oireachtas such amount or amounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine for the purposes of expenditure by the Council in the performance of its functions. 25

**Annual report of Council**

- 25. (1) As soon as practicable, but in any case not later than 6 months, after the end of each financial year of the Council, the Council shall prepare, and submit to the Minister, a report (in this section referred to as the “annual report”) in writing of its activities during that year. 30
- (2) If, under *subsection (1)*, the first annual report would relate to a period of less than 6 months, that report shall, notwithstanding that subsection, instead relate to the activities of the Council during that period and the financial year of the Council immediately following that period and the Council shall prepare, and submit to the Minister, the first annual report as soon as may be, but not later than 6 months, after the end of that financial year. 35

- (3) The annual report shall include information on the performance of the functions of the Council during the period to which it relates and such other information in such form as the Council considers appropriate.
- (4) The Minister shall as soon as may be after the receipt by him or her of the annual report cause copies of the report to be laid before each House of the Oireachtas. 5
- (5) The Council shall ensure that, as soon as practicable after copies of the annual report are laid before the Houses of the Oireachtas under *subsection (4)*, the report is published in such manner as the Council considers appropriate.

### **Accounts of Council**

- 26. (1) The Council shall keep, in such form and in respect of such accounting periods as may be approved by the Minister and the Minister for Public Expenditure and Reform, all proper and usual accounts of moneys received and expended by it, including an income and expenditure account and a balance sheet. 10
- (2) Not later than 3 months after the end of each accounting period, the Council shall submit the accounts kept under this section in respect of that period, signed by the Secretary, to the Comptroller and Auditor General for audit. 15
- (3) Immediately after the audit by the Comptroller and Auditor General of the accounts submitted to him or her in accordance with *subsection (2)*, the Council shall present to the Minister copies of—
  - (a) the audited accounts, including the income and expenditure account, the balance sheet and such other (if any) accounts kept under this section as the Minister, after consulting with the Minister for Public Expenditure and Reform, may direct, and 20
  - (b) the report of the Comptroller and Auditor General on the accounts.
- (4) As soon as practicable after the presentation to him or her of the audited accounts of the Council and the report of the Comptroller and Auditor General thereon, the Minister shall cause copies of them to be laid before each House of the Oireachtas. 25

### **Accountability of Council to Public Accounts Committee**

- 27. (1) The Secretary shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on— 30
  - (a) the regularity and propriety of the transactions recorded, or required to be recorded, in any book or other record of account subject to audit by the Comptroller and Auditor General that the Council is required by this Act to prepare, 35
  - (b) the economy and efficiency of the Council in the use of its resources,
  - (c) the systems, procedures and practices employed by the Council for the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Council referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993 or any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann. 5

(2) In the performance of his or her duties under this section, the Secretary shall not question or express an opinion on the merits of any policy of the Government or any Minister of the Government or on the merits of the objectives of such a policy.

#### **Accountability of Council to other Oireachtas committees**

28. (1) Subject to *subsection (2)*, the Secretary shall, at the request in writing of an Oireachtas committee, attend before it to give account for the general administration of the Council. 10

(2) The Secretary shall not be required to give account before an Oireachtas committee for any one or more of the following:

(a) the exercise by a judge of his or her judicial functions; 15

(b) any matter which is, or has been or may at a future date be the subject of proceedings before a court or tribunal in the State;

(c) any matter concerning a judge which is, or has been or may at a future date be the subject of an investigation by the Judicial Conduct Committee.

(3) Where the Secretary is of opinion that a matter in respect of which he or she is requested to give an account before an Oireachtas committee is a matter to which *subsection (2)* applies, he or she shall, as soon as practicable, seek the opinion of the Board thereon. 20

(4) If the Board is of opinion that the matter concerned is one to which *subsection (2)* applies, the Secretary shall inform the Oireachtas committee of the opinion and the reasons for the opinion and, unless the information is conveyed to the Oireachtas committee at the time when the Secretary is before it, the information shall be conveyed to the Oireachtas committee in writing. 25

(5) If the Board is of opinion that the matter concerned is not one to which *subsection (2)* applies, the Secretary shall attend before the Oireachtas committee to give account for the matter. 30

(6) Where the Secretary has informed an Oireachtas committee of the opinion of the Board in accordance with *subsection (4)* and the Oireachtas committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to the subject matter of that opinion— 35

(a) the Secretary may, not later than 21 days after being informed by the Oireachtas committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (2)* applies, or

(b) the chairperson of the Oireachtas committee may, on behalf of the Oireachtas committee, make such an application, 40

and the High Court shall determine the matter.

- (7) Pending the determination of an application under *subsection (6)*, the Secretary shall not attend before the Oireachtas committee to give account for the matter that is the subject of the application.
- (8) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the Oireachtas committee shall withdraw the request referred to in *subsection (1)* but if the High Court determines that *subsection (2)* does not apply, the Secretary shall attend before the Oireachtas committee to give account for the matter. 5
- (9) In the performance of his or her duties under this section, the Secretary shall not question or express an opinion on the merits of any policy of the Government or any Minister of the Government or on the merits of the objectives of such a policy. 10
- (10) In this section “Oireachtas committee” means—
- (a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 27* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or 15
- (b) a sub-committee of a committee falling under *paragraph (a)*.

## PART 5

### JUDICIAL CONDUCT COMMITTEE

#### CHAPTER 1

20

#### *Application of Part*

#### **Application of Part**

- 29.** (1) Subject to *subsection (2)*, this Part shall apply to conduct alleged to constitute judicial misconduct that occurred or is alleged to have occurred after the commencement of this Part. 25
- (2) Where there is more than one alleged incident of the conduct that is alleged to constitute judicial misconduct, with one or more such incidents having occurred or alleged to have occurred before the commencement of this Part and one or more such incidents having occurred or alleged to have occurred after such commencement, this Part shall apply only in relation to the alleged incidents of such conduct as have occurred or are alleged to have occurred after such commencement. 30
- (3) This Part shall not apply to a complaint concerning a judge who, at the time of the making of the complaint, has ceased to be a judge.
- (4) This Part shall cease to apply to a complaint if the judge in respect of whom the complaint was made ceases to be a judge— 35
- (a) before the referral of the complaint for resolution by informal means under *Chapter 4* or the initiation of an investigation of the complaint under *Chapter 5*,

- (b) during the course of the resolution of the complaint by the informal means process under *Chapter 4* or the conduct of an investigation of the complaint under *Chapter 5*, or
- (c) before the proposal by the Minister of an Article 35.4.1<sup>o</sup> motion, within the meaning of *section 67*, in Dáil Éireann or Seanad Éireann in respect of the judge where the Judicial Conduct Committee is considering the making of, has determined that it should make or has made a referral under that section arising from the complaint,

and, in circumstances to which *paragraph (b)* or *(c)* applies, the said resolution by the informal means process, the conduct of the investigation of the complaint or, if appropriate, the process for the making of a referral under *section 67*, as the case may be, shall be discontinued.

- (5) The Registrar shall, in circumstances to which *subsection (4)* applies, inform the complainant concerned and the former judge concerned in writing that this Part has ceased to apply to the complaint concerned by reason of the fact that the judge concerned has ceased to be a judge.

## CHAPTER 2

### *Judicial Conduct Committee*

#### **Judicial Conduct Committee**

- 30. (1) The Council shall establish a committee which shall be known as the Judicial Conduct Committee. 20
- (2) The function of the Judicial Conduct Committee shall be to promote and maintain high standards of conduct among judges, having regard to the principles of judicial conduct requiring judges to uphold and exemplify judicial independence, impartiality, integrity, propriety (including the appearance of propriety), competence and diligence and to ensure equality of treatment to all persons before the courts. 25
- (3) Without prejudice to the generality of *subsection (2)*, the Judicial Conduct Committee—
  - (a) shall consider complaints and refer them for resolution by informal means or undertake investigations into the conduct of individual judges in accordance with this Part, 30
  - (b) shall take such action, if any, in accordance with this Part as it considers necessary for the purposes of safeguarding the administration of justice whether as a result of its consideration of a complaint and its referral for resolution by informal means or the undertaking of an investigation under this Part or otherwise, 35
  - (c) shall prepare and publish guidelines providing for the resolution by informal means of complaints that are determined to be admissible under this Part,
  - (d) shall, not later than 12 months after its establishment, prepare and submit to the Board for its review draft guidelines concerning judicial conduct and ethics for adoption by the Council, 40

- (e) may of its own volition or, shall, on the request of the Board or the Council, prepare and submit to the Board for its review draft amendments to guidelines concerning judicial conduct and ethics adopted by the Council, and
- (f) may provide such advice and recommendations to an individual judge or to judges generally on judicial conduct and ethics as it sees fit. 5
- (4) The Judicial Conduct Committee shall, subject to this Act, be independent in the performance of its functions.
- (5) The Judicial Conduct Committee shall have all such powers as are necessary or expedient for the performance of its functions.
- (6) The Judicial Conduct Committee may obtain legal, medical or other advice in connection with the performance of any of its functions. 10
- (7) The Judicial Conduct Committee shall, in relation to the functions conferred on it by this Act—
  - (a) bring or defend legal proceedings, or
  - (b) do any other act or thing that is necessary for the performance of those functions, 15
 in the name of the Council.

**Membership of Judicial Conduct Committee**

- 31.** (1) The Judicial Conduct Committee shall comprise the following 13 members:
- (a) the *ex officio* members specified in *subsection (2)* or their replacements nominated under *subsection (3)*; 20
  - (b) the members elected under *subsection (4)*;
  - (c) the lay members appointed under *subsection (5)*.
  - (2) Each of the following shall, *ex officio*, be a member of the Judicial Conduct Committee (in this Act referred to as an “*ex officio* member of the Judicial Conduct Committee”): 25
    - (a) the Chief Justice, who shall act as chairperson of the Committee;
    - (b) the President of the Court of Appeal;
    - (c) the President of the High Court;
    - (d) the President of the Circuit Court;
    - (e) the President of the District Court. 30
  - (3) An *ex officio* member of the Judicial Conduct Committee may from time to time nominate in writing another judge (other than an elected member of the Judicial Conduct Committee) of the court of which he or she is Chief Justice or President, as the case may be, to perform the functions of such *ex officio* member during such period or on such occasion or occasions as are specified in the nomination and references in this Act to that *ex officio* member of the Judicial Conduct Committee shall, during such period or in respect of such occasion or occasions, include references to a judge so nominated. 35

- (4) Three members of the Judicial Conduct Committee (in this Act referred to as “elected members of the Judicial Conduct Committee”) shall be elected by and from among—
- (a) the ordinary judges of the Supreme Court,
  - (b) the ordinary judges of the Court of Appeal,
  - (c) the ordinary judges of the High Court, 5
  - (d) the ordinary judges and specialist judges of the Circuit Court, and
  - (e) the judges, other than the President, of the District Court.
- (5) The Government shall appoint 5 persons to be members of the Judicial Conduct Committee (in this Act referred to as “lay members” of the Judicial Conduct Committee) from among such persons as are recommended by the Public Appointments Service in accordance with *section 32* for appointment as such lay members. 10
- (6) A person shall not be eligible for appointment to be a lay member of the Judicial Conduct Committee—
- (a) if the person is a member of either House of the Oireachtas, the European Parliament or a local authority, 15
  - (b) if, in the case of a person who was a member of either House of the Oireachtas, the European Parliament or a local authority and who has ceased to be such a member, a period of 5 years has not yet elapsed since he or she was a member of either such House, such Parliament or a local authority, 20
  - (c) if the person is a judge or a former judge,
  - (d) if the person is a judge or a former judge of—
    - (i) the General Court of the European Union,
    - (ii) the Court of Justice of the European Union,
    - (iii) the European Court of Human Rights, 25
    - (iv) the International Court of Justice,
    - (v) the International Criminal Court, or
    - (vi) an international tribunal,
  - (e) if the person is an Advocate-General or a former Advocate-General of the Court of Justice of the European Union, 30
  - (f) if the person is a practising barrister or solicitor,
  - (g) if, in the case of a person who was a practising barrister or solicitor and who has ceased to be a practising barrister or practising solicitor, a period of 5 years has not yet elapsed since he or she last practised as a barrister or solicitor, or
  - (h) if the person is a civil servant. 35
- (7) If a lay member of the Judicial Conduct Committee—
- (a) is nominated to be a member of Seanad Éireann,



- (b) is elected to be a member of either House of the Oireachtas or to be a member of the European Parliament,
  - (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, 5
  - (d) is elected or co-opted to be a member of a local authority,
  - (e) is appointed to be a judge of—
    - (i) the General Court of the European Union,
    - (ii) the Court of Justice of the European Union,
    - (iii) the European Court of Human Rights, 10
    - (iv) the International Court of Justice,
    - (v) the International Criminal Court, or
    - (vi) an international tribunal,
  - (f) is appointed to be an Advocate-General of the Court of Justice of the European Union, 15
  - (g) commences practice as a barrister or solicitor, or
  - (h) becomes a civil servant,
- he or she shall thereupon cease to be a lay member of the Judicial Conduct Committee.
- (8) Of the lay members appointed to the Judicial Conduct Committee, not fewer than 40 per cent of them shall be women. 20

**Recommendations for appointment of lay members of Judicial Conduct Committee**

32. (1) The Government shall request the Public Appointments Service to undertake a selection process for the purpose of identifying and recommending to the Government persons who it is satisfied are suitable for appointment to be lay members of the Judicial Conduct Committee and, accordingly, the Public Appointments Service shall comply with that request and, following the conduct of such a selection process, make a recommendation to the Government in respect of persons who participated in such process in relation to whom it is so satisfied. 25
- (2) Subject to *subsection (3)* and *section 31(6)*, the Minister shall agree with the Public Appointments Service the selection criteria and procedures that are to apply to a selection process under this section. 30
- (3) For the purposes of making a recommendation under this section, the Public Appointments Service shall have regard to the desirability that the lay members of the Judicial Conduct Committee will, among them, possess knowledge of, and experience in, as many as possible of the following matters: 35
- (a) the maintenance of standards in professions regulated by a statutory or other body;

- (b) dealing with complaints made against members of such professions;
  - (c) mediation or other mechanisms for alternative dispute resolution;
  - (d) the administration of justice;
  - (e) the management and provision of services to members of the public.
- (4) Subject to *subsection (3)*, the Public Appointments Service shall not make a recommendation under this section in respect of a person unless it is satisfied that the person possesses such relevant experience, qualifications, training or expertise as is appropriate having regard to the functions of the Judicial Conduct Committee as would render him or her suitable to be a lay member of the Judicial Conduct Committee. 5  
10
- (5) The Public Appointments Service shall provide the Government with particulars of the experience, qualifications, training and expertise of each person in respect of whom it makes a recommendation under this section.
- (6) This section shall, with any necessary modifications, apply in relation to the filling of any vacancy that arises in the lay membership of the Judicial Conduct Committee. 15

**Term of membership of Judicial Conduct Committee**

33. (1) A nomination under *section 31(3)* shall—
- (a) cease to have effect upon—
    - (i) the expiration of the period or the passing of the occasion or occasions, as the case may be, specified in the nomination, or 20
    - (ii) the rescinding of the nomination by the *ex officio* member of the Judicial Conduct Committee who made the nomination,
  - (b) where the *ex officio* member of the Judicial Conduct Committee who made the nomination ceases to hold the judicial office by virtue of which he or she became such *ex officio* member, cease to have effect upon that *ex officio* member ceasing to hold that office, 25
  - (c) where the judge in respect of whom the nomination was made ceases to hold the judicial office by virtue of which he or she was so nominated, cease to have effect upon his or her ceasing to hold that office, or
  - (d) where the judge in respect of whom the nomination was made by notice in writing given or sent to the *ex officio* member of the Judicial Conduct Committee indicates that he or she does not wish to continue to perform the functions concerned, cease to have effect upon the receipt of that notice by that *ex officio* member. 30
- (2) Subject to *section 34(3)*, each elected member of the Judicial Conduct Committee and, subject to *section 34(4)*, each lay member of the Judicial Conduct Committee shall continue to be a member of the Committee for a term of 4 years from the date of his or her election or appointment, as the case may be, unless he or she sooner dies, resigns, becomes ineligible for membership or, in the case of a lay member, is removed from membership of the Committee. 35  
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- (3) Subject to *subsection (4)*, an elected member of the Judicial Conduct Committee or a lay member of the Judicial Conduct Committee whose term of membership expires with the passage of time shall be eligible for re-election or re-appointment to the Committee for a further term of 4 years as an elected member or lay member, as the case may be, of that Committee. 5
- (4) An elected member of the Judicial Conduct Committee or a lay member of the Judicial Conduct Committee who has served 2 terms as a member of that Committee shall not be eligible for re-election or re-appointment to the Committee as an elected member or lay member, as the case may be, other than in accordance with *subsection (5)*. 10
- (5) An elected member of the Judicial Conduct Committee or a lay member of the Judicial Conduct Committee who has served 2 terms as a member of that Committee shall be eligible for re-election or re-appointment to the Committee as an elected member or lay member, as the case may be, after a period of 4 years has elapsed from the date of the expiration of his or her most recent term of membership of the Judicial Conduct Committee as such an elected member or lay member, as the case may be. 15
- (6) An elected member of the Judicial Conduct Committee may resign from that Committee by notice in writing given or sent to the chairperson of the Committee and the resignation shall take effect on the day on which the chairperson receives the notice. 20
- (7) A lay member of the Judicial Conduct Committee may resign from that Committee by notice in writing given or sent to the Minister and the resignation shall take effect on the day on which the Minister receives the notice.
- (8) The lay member of the Judicial Conduct committee concerned shall give or send a copy of the notice under *subsection (7)* to the chairperson of the Judicial Conduct Committee when he or she gives or sends the notice to the Minister or as soon as practicable thereafter. 25
- (9) (a) An elected member of the Judicial Conduct Committee who is appointed to a judicial office referred to in any paragraph of *section 31(4)* other than the one that he or she held when he or she was so elected shall continue to be an elected member of the Judicial Conduct Committee. 30
- (b) Where an elected member of the Judicial Conduct Committee ceases to be a judge, he or she shall thereupon cease to be a member of the Committee.
- (10) The Government may at any time remove from the Judicial Conduct Committee a lay member of the Judicial Conduct Committee if the Government is satisfied that the lay member— 35
- (a) has become incapable through ill health of effectively performing the functions of the office,
- (b) has committed stated misbehaviour,
- (c) has a conflict of interest of such significance that he or she should cease to hold office, or 40
- (d) is otherwise unfit to hold office or unable to discharge the functions of the office.

- (11) The Judicial Conduct Committee may act notwithstanding any vacancy in its membership provided there are not less than—
  - (a) 4 members of the Committee who are judges, and
  - (b) 3 lay members of the Committee.

**Casual vacancies in membership of Judicial Conduct Committee** 5

- 34. (1) Where an elected member of the Judicial Conduct Committee dies, retires or resigns from judicial office, resigns from the Judicial Conduct Committee in accordance with *subsection (6) of section 33* or ceases to be a member of that Committee under *subsection (9)(b) of that section*, the vacancy so occasioned shall be filled by a judge elected to be a member of the Judicial Conduct Committee in the same manner as the member of the Committee who occasioned the vacancy was elected. 10
- (2) Where a lay member of the Judicial Conduct Committee dies, resigns from the Judicial Conduct Committee in accordance with *section 33(7)*, ceases to be a member of the Committee under *section 31(7)* or is removed from that Committee under *section 33(10)*, the vacancy so occasioned shall be filled by a person appointed to be a lay member of the Judicial Conduct Committee in the same manner as the member of the Committee who occasioned the vacancy was appointed. 15
- (3) The term of office of an elected member of the Judicial Conduct Committee elected in accordance with *subsection (1)* shall be for the unexpired period of the term of membership of the member of the Committee whom he or she has replaced. 20
- (4) The term of office of a lay member of the Judicial Conduct Committee appointed in accordance with *subsection (2)* shall be for the unexpired period of the term of membership of the member of the Committee whom he or she has replaced.
- (5) A term of membership of the Judicial Conduct Committee of any duration resulting from an election or appointment in accordance with *subsection (1) or (2)* shall be regarded as a term of membership for the purposes of *subsections (4) and (5) of section 33*. 25

**Meetings and procedures of Judicial Conduct Committee**

- 35. (1) The Judicial Conduct Committee shall hold such and so many meetings as may be necessary for the performance of its functions. 30
- (2) The first meeting of the Judicial Conduct Committee shall be held not later than 3 months after the date of the first meeting of the Council.
- (3) At a meeting of the Judicial Conduct Committee—
  - (a) the chairperson of that Committee shall, if present, be the chairperson of the meeting, or 35
  - (b) if and so long as the chairperson of that Committee is not present, the next most senior judge present shall be the chairperson of the meeting.
- (4) Every question at a meeting of the Judicial Conduct Committee shall be determined by a majority of the votes of the members of the Judicial Conduct Committee present

and voting on the question and, in the case of an equal division of the votes, the chairperson of the meeting shall have a second or casting vote.

- (5) The quorum for a meeting of the Judicial Conduct Committee shall be 5, of whom—
- (a) not fewer than 3 shall be *ex officio* members of the Judicial Conduct Committee or elected members of the Judicial Conduct Committee, and 5
  - (b) not fewer than 2 shall be lay members of the Judicial Conduct Committee.
- (6) Subject to this Act and any procedures specified by it under *section 39*, the Judicial Conduct Committee shall regulate its own procedures.

### **Registrar to Judicial Conduct Committee**

36. (1) The Secretary or a member of the staff of the Council who is designated under *section 22(5)* to perform the functions of the Secretary shall, in addition to the functions conferred on the Secretary by this Act, act as secretary to the Judicial Conduct Committee and, when so acting, shall be known as the Registrar to the Judicial Conduct Committee (in this Act referred to as the “Registrar”). 10
- (2) The Registrar shall not be a member of the Judicial Conduct Committee but he or she may, in accordance with procedures specified by the Judicial Conduct Committee, attend meetings of the Committee and shall be entitled to speak and give advice at such meetings. 15
- (3) The Registrar shall not attend meetings of the Complaints Review Committee. 20

## CHAPTER 3

20

### *Complaints*

### **Complaints**

37. (1) A complaint concerning the conduct of a judge (in this Act referred to as the “judge concerned”) that is alleged to constitute judicial misconduct may be made to the Registrar in accordance with the procedures specified by the Judicial Conduct Committee under *section 39* by a person who is directly affected by, or who witnessed, the conduct. 25
- (2) A complaint may be made under *subsection (1)* on behalf of—
- (a) a child, by a parent or guardian of the child, or
  - (b) a person who is unable to make the complaint himself or herself by reason of a mental or physical incapacity, by a person duly authorised by law to act on behalf of the first-mentioned person. 30
- (3) A complaint may be made under *subsection (1)* on behalf of a solicitor who is a member of the Law Society of Ireland by a duly authorised officer of the Law Society of Ireland. 35
- (4) A complaint may be made under *subsection (1)* on behalf of a barrister who is a member of the General Council of the Bar of Ireland by a duly authorised officer of the General Council of the Bar of Ireland.

- (5) The Registrar shall, as soon as practicable after the receipt of a complaint, notify the judge concerned of the complaint and provide him or her with—
  - (a) the name of the complainant, and
  - (b) particulars of the complaint.
- (6) Where a complaint is made in accordance with *subsection (2), (3) or (4)* on behalf of a complainant referred to in each of those subsections by another person, any requirement in this Part to notify the complainant of any matter relating to the complaint or to send a draft report or notice to the complainant shall be construed as a requirement to notify that other person or to send the draft report or notice to that other person, as may be appropriate. 5 10

**Time limit for making complaints**

- 38. (1) Subject to *subsections (2) and (3)*, a complaint shall be made not later than 3 months after the date of the occurrence or alleged occurrence of the conduct alleged to constitute judicial misconduct that occasioned the complaint.
- (2) Where a complaint relates to more than one incident of the occurrence or alleged occurrence of the conduct of the judge concerned that is alleged to constitute judicial misconduct, the complaint in relation to such conduct shall be made not later than 3 months after the date of the last occurrence or alleged occurrence of that conduct. 15
- (3) The Judicial Conduct Committee may, on referral of a complaint or a part of a complaint, by the Registrar under *section 40(5)* or by the Complaints Review Committee under *section 43(4)*, determine that it is just and equitable, having regard to the nature of the conduct or alleged conduct to which the complaint, or the part of the complaint so referred, relates and any other relevant circumstances, for the period referred to in *subsection (1) or (2)*, as may be appropriate, for the making of the complaint to be extended so that the complaint, or the part of the complaint so referred, as the case may be, is admissible. 20 25

**Procedures of Judicial Conduct Committee relating to complaints or matters relating to judicial conduct**

- 39. (1) The Judicial Conduct Committee shall, subject to this Part, specify procedures relating to— 30
  - (a) the making and investigation of complaints under this Part,
  - (b) investigations under *section 46*, and
  - (c) the making of determinations by it under this Part.
- (2) In specifying procedures under *subsection (1)*, the Judicial Conduct Committee shall have regard to the need for it to perform its functions in an effective manner and in accordance with fair procedures. 35
- (3) Without prejudice to the generality of *subsection (1)*, procedures specified under this section may make provision in relation to the following:
  - (a) the making of a complaint;

- (b) the determination of the admissibility of a complaint;
  - (c) the resolution of a complaint by informal means;
  - (d) the investigation of a complaint by a panel of inquiry;
  - (e) the making of a determination by the Judicial Conduct Committee under *section 66*; 5
  - (f) the steps and processes to be followed by the Judicial Conduct Committee and a panel of inquiry for the purposes of an investigation under *section 46*;
  - (g) a referral by the Judicial Conduct Committee under *section 67* within the meaning of that section to the Minister and the steps and processes to be followed by the Judicial Conduct Committee and a panel of inquiry with regard to such a referral; 10
  - (h) the period within which anything is required to be done under this Part.
- (4) The Judicial Conduct Committee shall publish procedures specified by it under this section in such manner as it considers appropriate.

**Admissibility of complaints** 15

40. (1) On receiving a complaint, the Registrar shall determine whether or not the complaint is admissible.
- (2) Subject to *subsection (3)*, a complaint is admissible if—
- (a) the complaint is made by a person authorised under *section 37* to make a complaint, 20
  - (b) the conduct alleged could, if substantiated, constitute judicial misconduct by the judge concerned,
  - (c) the complaint is made within the period specified in *subsection (1)* or *(2)*, as may be appropriate, of *section 38* or any extension of that period under *subsection (3)* of that section, 25
  - (d) the complaint is not frivolous or vexatious, and
  - (e) the complaint is made in compliance with procedures for that purpose specified by the Judicial Conduct Committee under *section 39*.
- (3) A complaint that relates solely to—
- (a) conduct by the judge concerned in proceedings before him or her in respect of which a remedy has already been provided or may be provided if pursued by the complainant— 30
    - (i) in those proceedings,
    - (ii) on appeal from a decision of the judge concerned in those proceedings or on any further appeal from such an appeal until those proceedings are finally determined, 35
    - (iii) in proceedings by way of judicial review of any decision of the judge concerned in the proceedings before that judge, or

- (iv) in any other proceedings,
  - or
  - (b) the merits of a decision in proceedings before the judge concerned,  
is not admissible.
- (4) Where the Registrar determines that a complaint is admissible in whole or in part, he or she shall refer—
- (a) the complaint, or
  - (b) in the case of a complaint that is admissible in part only, the part of the complaint that he or she determines to be admissible (which, following that determination but subject to *section 43(9)*, is deemed to constitute the complaint for the purposes of this Act),
- to the Judicial Conduct Committee to be dealt with in accordance with *section 47*.
- (5) Where the Registrar is satisfied that a complaint, or a part of a complaint, would be admissible but for its having been made after the expiration of the period specified in *subsection (1) or (2)*, as may be appropriate, of *section 38*, he or she shall refer the complaint, or that part of the complaint, to the Judicial Conduct Committee for its determination under *subsection (3)* of that section as to whether that period should be extended and, in the event of such an extension, the complaint, or that part of the complaint, shall be dealt with in accordance with *section 47*.

**Notification following determination of whether or not complaint is admissible**

- 41.** (1) Where the Registrar makes a determination under *section 40* that a complaint, or a part of a complaint, is inadmissible and does not refer the complaint, or that part of the complaint, to the Judicial Conduct Committee under *subsection (5)* of that section, he or she shall—
- (a) notify the complainant and the judge concerned in writing of—
    - (i) his or her determination, and
    - (ii) the complainant’s entitlement under *section 43* to seek a review of the determination,
  - (b) include in the notification the reasons for the determination, and
  - (c) subject to *section 43*, take no further action in relation to the complaint.
- (2) Where the Registrar makes a determination under *section 40* that a complaint, or a part of a complaint, is admissible or refers a complaint, or a part of the complaint, to the Judicial Conduct Committee under *subsection (5)* of that section, the Registrar shall, as soon as practicable thereafter, notify the complainant and the judge concerned in writing of the determination or referral, as the case may be.
- (3) Following a determination by the Judicial Conduct Committee under *section 38(3)* as to whether the time for the making of a complaint, or a part of a complaint, as the case may be, shall be extended, the Registrar shall, as soon as practicable thereafter, notify the complainant and the judge concerned in writing of the determination and the



reason therefor and whether or not the complaint, or the part of the complaint, concerned is thereby admissible.

### Complaints Review Committee

42. (1) The Judicial Conduct Committee shall establish a committee to be known as the Complaints Review Committee to review, in accordance with *section 43*, the admissibility of complaints, or parts of complaints, that have been determined by the Registrar to be inadmissible. 5
- (2) The Complaints Review Committee shall comprise 3 members appointed by the Judicial Conduct Committee, of whom 2 shall be *ex officio* members of the Judicial Conduct Committee or elected members of the Judicial Conduct Committee and one shall be a lay member of the Judicial Conduct Committee. 10
- (3) Every person appointed under *subsection (2)* to be a member of the Complaints Review Committee shall serve as a member of the Committee for a term, to be specified in writing at the time of his or her appointment, of not less than one year and not more than 2 years from the date of his or her appointment. 15
- (4) Subject to *subsection (5)*, a member of the Complaints Review Committee whose term of membership expires with the passage of time shall be eligible for re-appointment to the Committee for a further term, to be specified in writing at the time of his or her re-appointment, of not less than one year and not more than 2 years from the date of his or her re-appointment. 20
- (5) A member of the Complaints Review Committee who has served 2 terms of membership shall not be eligible to serve a further term as a member of the Committee other than in accordance with *subsection (6)*.
- (6) A member of the Complaints Review Committee who has served 2 terms of membership shall be eligible for re-appointment to the Committee after a period of 2 years has elapsed immediately following the expiration of his or her most recent term of membership of the Committee. 25
- (7) A member of the Complaints Review Committee may resign from his or her membership of the Committee by notice in writing given or sent to the chairperson of the Judicial Conduct Committee. 30
- (8) The Judicial Conduct Committee may appoint another *ex officio* member of the Judicial Conduct Committee, elected member of the Judicial Conduct Committee or lay member of the Judicial Conduct Committee, as may be appropriate, to fill a casual vacancy arising in the Complaints Review Committee under *subsection (7)* and *subsection (3)* shall apply in relation to the filling of any such vacancy. 35
- (9) Where a member of the Complaints Review Committee ceases to be a member of the Judicial Conduct Committee, he or she shall thereupon cease to be a member of the Complaints Review Committee.
- (10) Where a matter is required to be determined by the Complaints Review Committee, each member of the Committee shall have one vote and the matter shall be determined by a majority of the votes of the members of the Committee. 40

- (11) Subject to this Act, the Complaints Review Committee may regulate its own procedures, including procedures relating to the conduct of meetings of the Committee.

**Review of determination that complaint, or part of complaint, is inadmissible**

43. (1) Where the Registrar determines under *section 40* that a complaint is inadmissible, the complainant may seek a review of the determination by request in writing in that behalf to the Registrar not later than 30 days after the date of receiving notification of that determination. 5
- (2) Where the Registrar receives a request for a review of a determination that a complaint is inadmissible, the Registrar shall refer the complaint to the Complaints Review Committee and he or she shall notify the complainant and the judge concerned in writing that the complaint has been so referred. 10
- (3) The Complaints Review Committee shall consider a complaint referred to it under *subsection (2)* and shall determine in accordance with *subsections (2) and (3) of section 40* whether or not the complaint is admissible in whole or in part and, if he or she determines that the complaint is admissible in part only, identify the part of the complaint that is admissible (which, following that determination, is deemed to constitute the complaint for the purposes of this Act). 15
- (4) Where the Complaints Review Committee is satisfied that a complaint, or a part of a complaint, would be admissible but for its having been made after the expiration of the period specified in *subsection (1) or (2)*, as may be appropriate, of *section 38*, that Committee shall refer the complaint, or that part of the complaint, to the Judicial Conduct Committee for its determination under *subsection (3) of that section* as to whether that period should be extended and, in the event of such an extension, the complaint, or that part of the complaint, shall be dealt with in accordance with *section 47*. 20 25
- (5) The Complaints Review Committee shall notify the Registrar in writing of its determination under *subsection (3)*, or a referral of a complaint, or a part of a complaint, as the case may be, under *subsection (4)*, and the reasons therefor.
- (6) On receiving a notification under *subsection (5)* from the Complaints Review Committee that a complaint, or a part of a complaint, is admissible or of a referral of a complaint, or a part of a complaint, as the case may be, under *subsection (4)*, the Registrar shall, as soon as practicable thereafter, notify the complainant, the judge concerned and the Judicial Conduct Committee in writing of the determination or referral, as the case may be, and the reasons therefor. 30 35
- (7) On receiving a notification under *subsection (5)* from the Complaints Review Committee that a complaint, or a part of a complaint, is admissible or of a referral of a complaint, or a part of a complaint, under *subsection (4)*, the Registrar shall, as soon as practicable thereafter, provide the judge concerned with— 40
- (a) the name of the complainant, and
- (b) particulars of the complaint or that part of the complaint, as the case may be.
- (8) On receiving a notification under *subsection (5)* from the Complaints Review Committee that a complaint is inadmissible, the Registrar shall—

- (a) notify the complainant and the judge concerned in writing of the determination of the Complaints Review Committee and the reasons therefor, and
  - (b) take no further action in relation to the complaint.
- (9) This section shall apply, with any necessary modifications, to a part of a complaint that is determined by the Registrar under *section 40(4)* to be inadmissible. 5

**Withdrawal of complaint under consideration by Registrar or Complaints Review Committee**

44. (1) Where a complaint is withdrawn while it is being considered by the Registrar under *section 40*, the Registrar may—
- (a) decide that no further action should be taken in relation to the matter that is the subject of the complaint, or 10
  - (b) refer the matter that is the subject of the complaint to the Judicial Conduct Committee for a decision by that Committee on whether or not to initiate an investigation in relation thereto under *section 46*.
- (2) Where a complaint is withdrawn while it is being considered by the Complaints Review Committee under *section 43*, the Complaints Review Committee may— 15
- (a) decide that no further action should be taken in relation to the matter that is the subject of the complaint, or
  - (b) refer the matter that is the subject of the complaint to the Judicial Conduct Committee for a decision by that Committee on whether or not to initiate an investigation in relation thereto under *section 46*. 20
- (3) (a) Where the Registrar decides in accordance with *subsection (1)* that no further action should be taken in relation to a complaint, no further action shall be taken in relation to the complaint.
- (b) Where the Complaints Review Committee decides in accordance with *subsection (2)* that no further action should be taken in relation to a complaint, no further action shall be taken in relation to the complaint. 25
- (4) (a) The Registrar shall, as soon as practicable after the making of a decision or referral under *subsection (1)*, notify the complainant and the judge concerned thereof in writing. 30
- (b) The Complaints Review Committee shall notify the Registrar of a decision or referral under *subsection (2)*, and the Registrar shall, as soon as practicable thereafter, notify the complainant and the judge concerned thereof in writing.

**If judge concerned consents to reprimand by Judicial Conduct Committee before complaint is investigated** 35

45. (1) The judge concerned may, at any time after a complaint in respect of him or her is determined to be admissible under *section 40* or *43* and before a panel of inquiry is appointed under *section 51(1)* to investigate the complaint, inform the Judicial Conduct Committee in writing that he or she consents to the issuing of a reprimand to him or her in relation to the complaint. 40

- (2) The Judicial Conduct Committee shall, upon being informed under *subsection (1)* by the judge concerned that he or she consents to the issuing of a reprimand to him or her in relation to the complaint concerned, consider the nature, gravity and circumstances of the complaint and, if satisfied that it is appropriate to do so having regard to the interests of the administration of justice, issue a reprimand to the judge concerned. 5
- (3) The reprimand of the judge concerned under *subsection (2)* may provide for any one or more of the matters specified in *paragraphs (a) to (c) of section 63(5)*.
- (4) The Registrar shall, as soon as practicable after the Judicial Conduct Committee issues a reprimand to the judge concerned under *subsection (2)*, notify the complainant in writing thereof. 10

**Investigations of judicial misconduct in absence of, or after withdrawal of, complaint**

- 46. (1) The Judicial Conduct Committee may, in the absence of a complaint or where a complaint in respect of a judge is withdrawn, refer any matter relating to the conduct of a judge to a panel of inquiry for investigation if—
  - (a) it is satisfied that there exists *prima facie* evidence of judicial misconduct by the judge, and 15
  - (b) it considers it necessary to do so for the purposes of safeguarding the administration of justice.
- (2) The provisions of this Part relating to investigations and reports shall apply with all necessary modifications in relation to a matter referred to a panel of inquiry under *subsection (1)* as if that matter were the subject of a complaint. 20
- (3) Where a matter is referred to the Judicial Conduct Committee under *subsection (1)* or (2) of *section 44* and the Judicial Conduct Committee decides under *subsection (1)* of this section not to refer the matter that is the subject of the complaint for investigation, no further action shall be taken in relation to that matter and the Registrar shall, as soon as practicable thereafter, notify the complainant and the judge whose conduct is the subject of the withdrawn complaint in writing of that decision. 25
- (4) Where a matter is referred to the Judicial Conduct Committee under *subsection (1)* or (2) of *section 44* and the Judicial Conduct Committee decides under *subsection (1)* of this section to refer the matter for investigation, the Registrar shall, as soon as practicable thereafter, notify the complainant of that decision. 30
- (5) Where the Judicial Conduct Committee decides under *subsection (1)* to refer a matter for investigation, the Registrar shall, as soon as practicable thereafter, notify the judge whose conduct is being investigated thereof in writing and provide him or her with particulars of the alleged judicial misconduct concerned. 35

**Referral of complaint for resolution by informal means or investigation**

- 47. (1) Whenever a complaint is determined to be admissible under *section 40* or *43*, the Judicial Conduct Committee shall either—
  - (a) refer the complaint for resolution by informal means under *Chapter 4* if it is satisfied that it is appropriate to so do, or 40

- (b) refer the complaint to a panel of inquiry appointed for that purpose under *section 51* for investigation.
- (2) Where a complaint relates to conduct in relation to proceedings that have not been finally determined, the Judicial Conduct Committee may, where it considers it appropriate to do so, adjourn any investigation of the complaint under this Part pending the final determination of the proceedings. 5
- (3) Whenever the Judicial Conduct Committee receives a report under *section 50(1)*, it shall consider the report and shall refer the complaint to a panel of inquiry appointed for that purpose under *section 51* for investigation.
- (4) Whenever the Judicial Conduct Committee receives a report under *section 50(4)*, it shall consider the report and may, where it considers it appropriate to so do, refer the complaint to a panel of inquiry appointed for that purpose under *section 51* for investigation. 10
- (5) The Registrar shall, as soon as practicable after the performance by the Judicial Conduct Committee of any function in relation to a complaint under the foregoing provisions of this section, notify the complainant and the judge concerned in writing thereof. 15

#### CHAPTER 4

#### *Resolution of complaints by informal means*

#### **Referral of complaint for resolution by informal means** 20

- 48. (1) Where the Judicial Conduct Committee decides under *section 47(1)* to refer a complaint in respect of the judge concerned for resolution by informal means, it shall request in writing the designated judge or designated judges to undertake the resolution of the complaint by informal means in accordance with this Chapter.
- (2) The designated judge or designated judges may, upon receipt by him, her or them of a request under *subsection (1)*, appoint not more than 3 judges of the court of which the judge concerned is a judge to undertake the resolution by informal means in accordance with this Chapter of the complaint concerned on behalf of that designated judge or those designated judges, and the judge or judges so appointed shall undertake the resolution by informal means of that complaint accordingly. 25 30
- (3) References in this Chapter (other than in this section) to the designated judge or designated judges shall, in the case of a complaint in respect of which an appointment or appointments is or are made under *subsection (2)*, be construed as references to the judge or judges appointed under that subsection.

#### **Resolution of complaints by informal means** 35

- 49. (1) No attempt shall be made to resolve a complaint by informal means pursuant to this Chapter without the consent of the complainant and the judge concerned.
- (2) A consent given by the judge concerned for the resolution of the complaint concerned by informal means shall not be taken as an admission of any allegation made in that complaint against that judge. 40

- (3) Subject to *section 50*, an answer given or statement made, in the course of attempting to resolve a complaint pursuant to this Chapter, by the complainant or the judge concerned shall not—
  - (a) be communicated to any person other than the persons participating in the attempt to resolve the complaint, or 5
  - (b) be admissible in any disciplinary, civil or criminal proceedings.
- (4) The resolution of a complaint by informal means pursuant to this Chapter shall not include the payment of any financial compensation.

**Report to Judicial Conduct Committee from designated judge or designated judges**

- 50. (1) If the designated judge or designated judges are of opinion that a complaint referred to him, her or them under *section 47(1)(a)* is not suitable for resolution by informal means, he, she or they shall prepare, and submit to the Judicial Conduct Committee, a report in writing specifying the reasons for that opinion. 10
- (2) The designated judge or designated judges shall, where he, she or they are satisfied that a complaint referred to him, her or them under *section 47(1)(a)* has been resolved by informal means prepare, and submit to the Judicial Conduct Committee, a report in writing specifying particulars of the resolution of the complaint, and the Judicial Conduct Committee shall take note of the report and take no further action in relation to the complaint. 15
- (3) Following receipt by the Judicial Conduct Committee of a report under *subsection (2)*, the Registrar shall notify the complainant and the judge concerned in writing that in view of the resolution of the complaint concerned pursuant to this Chapter no further action will be taken by the Judicial Conduct Committee in relation to that complaint. 20
- (4) The designated judge or designated judges shall, where a complaint referred to him, her or them under *section 47(1)(a)* has not been resolved by informal means, prepare, and submit to the Judicial Conduct Committee, a report in writing specifying the following: 25
  - (a) particulars of the complaint;
  - (b) the reasons why, in the opinion of the designated judge or designated judges, the complaint was not resolved by informal means. 30

CHAPTER 5

*Investigation of complaints*

**Referral of complaint by Judicial Conduct Committee to panel of inquiry**

- 51. (1) The Judicial Conduct Committee shall, where it decides to refer a complaint to a panel of inquiry under *subsection (1)(b), (3) or (4) of section 47*, appoint a panel of inquiry to investigate the complaint. 35
- (2) A notification under *subsection (5) of section 47* (other than a notification of a decision under *subsection (1)(a) or (2) of that section*) to the judge concerned shall inform him or her—

- (a) of the referral of a complaint to a panel of inquiry for investigation,
- (b) of the particulars of the complaint, including any evidence in support of the complaint, and
- (c) that if the panel of inquiry conducts a hearing in connection with the investigation of the complaint, he or she is entitled— 5
  - (i) either in person or through his or her representative to attend and defend himself or herself at the hearing, and
  - (ii) where a direction is given under *section 55(5)*, to request that some or all of the hearing be held otherwise than in public.
- (3) A notification under *subsection (5)* of *section 47* (other than a notification of a decision under *subsection (1)(a)* or *(2)* of that subsection) to the complainant shall inform him or her that if the panel of inquiry conducts a hearing in connection with the investigation of the complaint he or she is entitled, where a direction is given under *section 55(5)*, to request that some or all of the hearing be held otherwise than in public. 10 15
- (4) The Judicial Conduct Committee shall not accede to a request under *subsection (2)(c)(ii)* or *(3)* in the absence of reasonable and sufficient cause.

**Recommendations for nomination of lay members of panels of inquiry**

- 52.** (1) The Government shall request the Public Appointments Service to undertake a selection process for the purpose of identifying and recommending to the Government persons who it is satisfied are suitable for appointment to be lay members of panels of inquiry and, accordingly, the Public Appointments Service shall comply with that request and, following the conduct of such a selection process, make a recommendation to the Government in respect of persons who participated in such process in relation to whom it is so satisfied. 20 25
- (2) Subject to *subsection (3)* and *section 53(3)*, the Minister shall agree with the Public Appointments Service the selection criteria and procedures that are to apply to a selection process under this section.
- (3) For the purposes of making a recommendation under this section, the Public Appointments Service shall have regard to the desirability that the lay members of a panel of inquiry will, among them, possess knowledge of, and experience in, as many as possible of the following matters: 30
- (a) the maintenance of standards in professions regulated by a statutory or other body;
  - (b) dealing with complaints made against members of such professions; 35
  - (c) mediation or other mechanisms for alternative dispute resolution;
  - (d) the administration of justice;
  - (e) the management and provision of services to members of the public.
- (4) Subject to *subsection (3)*, the Public Appointments Service shall not make a recommendation under this section in respect of a person unless it is satisfied that the 40

person possesses such relevant experience, qualifications, training or expertise as is appropriate having regard to the functions of a panel of inquiry as would render him or her suitable for appointment to be a lay member of a panel of inquiry.

- (5) The Public Appointments Service shall provide the Government with particulars of the experience, qualifications, training and expertise of each person in respect of whom it makes a recommendation under this section. 5

### **Nomination for appointment of lay members of panels of inquiry**

53. (1) From time to time, the Government shall, from among persons in respect of whom a recommendation has been made under *section 52*, nominate not fewer than 7 persons and not more than 12 persons for appointment by the Judicial Conduct Committee under *section 54(1)(b)* to be lay members of panels of inquiry. 10
- (2) The Government shall, insofar as practicable and having regard to relevant experience, endeavour to ensure that not fewer than 40 per cent of persons nominated under *subsection (1)* are women.
- (3) A person shall not be eligible to be nominated under *subsection (1)*, or appointed under *section 54*, to be a lay member of a panel of inquiry— 15
- (a) if the person is a member of either House of the Oireachtas, the European Parliament or a local authority,
  - (b) if, in the case of a person who was a member of either House of the Oireachtas, the European Parliament or a local authority and who has ceased to be such a member, a period of 5 years has not yet elapsed since he or she was a member of either such House, such Parliament or a local authority, 20
  - (c) if the person is a judge or a former judge,
  - (d) if the person is a judge or a former judge of—
    - (i) the General Court of the European Union, 25
    - (ii) the Court of Justice of the European Union,
    - (iii) the European Court of Human Rights,
    - (iv) the International Court of Justice,
    - (v) the International Criminal Court, or
    - (vi) an international tribunal, 30
  - (e) if the person is an Advocate-General or a former Advocate-General of the Court of Justice of the European Union,
  - (f) if the person is a lay member of the Judicial Conduct Committee,
  - (g) if the person is a practising barrister or solicitor,
  - (h) if, in the case of a person who was a practising barrister or solicitor and who has ceased to be a practising barrister or practising solicitor, a period of 5 years has not elapsed since he or she last practised as a barrister or solicitor, or 35
  - (i) if the person is a civil servant.



- (4) If a lay member of a panel of inquiry—
- (a) is nominated to be a member of Seanad Éireann,
  - (b) is elected to be a member of either House of the Oireachtas or to be a member of the European Parliament,
  - (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament, 5
  - (d) is elected or co-opted to be a member of a local authority,
  - (e) is appointed to be a judge of—
    - (i) the General Court of the European Union, 10
    - (ii) the Court of Justice of the European Union,
    - (iii) the European Court of Human Rights,
    - (iv) the International Court of Justice,
    - (v) the International Criminal Court, or
    - (vi) an international tribunal, 15
  - (f) is appointed to be an Advocate-General of the Court of Justice of the European Union,
  - (g) is appointed to be a member of the Judicial Conduct Committee,
  - (h) commences practice as a barrister or solicitor, or
  - (i) becomes a civil servant, 20
- he or she shall thereupon cease to be a lay member of the panel of inquiry.
- (5) A person nominated under *subsection (1)* may, by notice in writing given or sent to the chairperson of the Judicial Conduct Committee, indicate that he or she no longer wishes to be considered for appointment by that Committee under *section 54(1)(b)* to a panel of inquiry and, upon receipt of that notice by the chairperson of that Committee, the nomination under *subsection (1)* in respect of that person shall cease to have effect. 25
- (6) The chairperson of the Judicial Conduct Committee shall inform the Minister of any notice received by him or her under *subsection (5)*.

**Appointment of members of panel of inquiry** 30

- 54.** (1) The Judicial Conduct Committee shall appoint 3 persons to be members of a panel of inquiry for the purposes of this Chapter, namely—
- (a) two judges (other than an *ex officio* member of the Judicial Conduct Committee or an elected member of the Judicial Conduct Committee), one of whom shall be a judge of the court of which the judge concerned is a judge and the other of whom shall be a judge of another court, and 35
  - (b) one lay member nominated under *section 53*.

- (2) The Judicial Conduct Committee shall appoint one member of a panel of inquiry appointed under *subsection (1)* to be its chairperson.
- (3) For the purposes of *subsection (1)(a)*, where the judge concerned whose conduct is being investigated is—
- (a) the President of the Court of Appeal, he or she shall be considered to be a judge of the Supreme Court, 5
  - (b) the President of the High Court, he or she shall be considered to be a judge of the Court of Appeal,
  - (c) the President of the Circuit Court, he or she shall be considered to be a judge of the High Court, or 10
  - (d) the President of the District Court, he or she shall be considered to be a judge of the Circuit Court.
- (4) A member of a panel of inquiry appointed under *subsection (1)* may resign from the panel of inquiry by notice in writing given or sent to the chairperson of the Judicial Conduct Committee and the resignation shall take effect on the day on which the chairperson of the Committee receives the notice, but such resignation shall not of itself prevent his or her appointment to, or continued membership of, another panel of inquiry. 15
- (5) (a) Where a member of a panel of inquiry appointed under *subsection (1)(a)* was, at the time of his or her appointment to be such a member, a judge of the court of which the judge concerned is a judge and he or she subsequently ceases to be a judge of that court, he or she shall thereupon cease to be a member of the panel of inquiry. 20
- (b) Where a member of a panel of inquiry appointed under *subsection (1)(a)* ceases to be a judge, he or she shall thereupon cease to be a member of the panel of inquiry. 25
- (6) If a member of a panel of inquiry resigns or otherwise ceases to be a member of a panel of inquiry, the Judicial Conduct Committee may—
- (a) if the member was a judge of the court of which the judge concerned is a judge, appoint a judge of that court, 30
  - (b) if the member was a judge of a court other than the court of which the judge concerned is a judge, appoint a judge of a court other than the latter court but who may be a judge of a court other than the former court, or
  - (c) if the member was a lay member of the panel of inquiry, appoint a person standing nominated for the time being under *section 53*, 35
- to replace the member of the panel of inquiry who resigned or otherwise ceased to be a member thereof.
- (7) A member of the staff of the Council (other than the Registrar), nominated by the chairperson of the Judicial Conduct Committee, shall act as registrar to a panel of inquiry (in this Act referred to as “registrar to a panel of inquiry”). 40

### **Conduct of investigation**

55. (1) A panel of inquiry shall, in accordance with this section, investigate a complaint referred to it under *section 47*.
- (2) For the purposes of the investigation of a complaint under this section, a panel of inquiry may seek such information or documents relating to the complaint as it considers appropriate. 5
- (3) A panel of inquiry may conduct a hearing in connection with its investigation of a complaint.
- (4) The registrar to a panel of inquiry shall notify the judge concerned and the complainant in writing of the date, time and place of a hearing under *subsection (3)* in sufficient time for the judge concerned and the complainant to prepare for the hearing. 10
- (5) A hearing of a complaint before a panel of inquiry shall be conducted otherwise than in public unless the Judicial Conduct Committee directs that in order to safeguard the administration of justice it should be conducted in public.
- (6) At a hearing of a complaint before a panel of inquiry— 15
- (a) the registrar to the panel of inquiry shall present particulars of the complaint,
  - (b) the testimony of witnesses attending the hearing shall be given on oath, and
  - (c) there shall be a right to cross-examine witnesses and call evidence in defence and reply.
- (7) Any member of a panel of inquiry investigating a complaint, or the registrar to the panel of inquiry, may administer an oath for the purposes of the investigation of the complaint. 20

### **Powers and protections relating to witnesses and evidence**

56. (1) For the purposes of the investigation of a complaint under this Chapter, a panel of inquiry shall have all the powers, rights and privileges that are vested in the High Court or a judge thereof on the hearing of an action and that relate to— 25
- (a) enforcing the attendance of witnesses,
  - (b) examining witnesses on oath or otherwise, and
  - (c) compelling the production (including discovery) of records, including a record of proceedings in court or a transcript of such a record. 30
- (2) Without prejudice to the generality of *subsection (1)*, a summons issued on behalf of a panel of inquiry by the chairperson of the panel of inquiry or by such other member of the panel of inquiry as is authorised by the panel of inquiry for that purpose may be substituted for and is the equivalent of any formal process capable of being issued in an action for enforcing the attendance of witnesses or compelling the production of documents. 35
- (3) Subject to any procedures in force and to the necessity of observing fair procedures, a panel of inquiry may receive—
- (a) oral evidence given before the panel of inquiry,

- (b) evidence by affidavit, or
  - (c) evidence in such manner (including by means of a live video link, a video recording, a sound recording or any other mode of transmission) as is authorised by procedures specified under *section 39*.
- (4) A person shall be guilty of an offence if he or she— 5
- (a) fails without reasonable excuse to comply with a summons issued by a panel of inquiry or to attend before the panel of inquiry at the time and place specified in the summons,
  - (b) while attending as a witness before a panel of inquiry refuses to—
    - (i) take an oath lawfully required by the panel of inquiry to be taken, 10
    - (ii) produce any document in the person’s power or control that the person is lawfully required by the panel of inquiry to produce, or
    - (iii) answer any question that the person is lawfully required by the panel of inquiry to answer,
  - (c) while attending before a panel of inquiry does anything that, if the panel of inquiry were a court of law having power to punish for contempt, would be contempt of court, or 15
  - (d) gives evidence before a panel of inquiry that if it had been given by the person in proceedings before a court would have constituted the offence of perjury.
- (5) A person guilty of an offence under *paragraph (a), (b) or (c) of subsection (4)* shall be liable on summary conviction to a class A fine. 20
- (6) A person guilty of an offence under *subsection (4)(d)* shall be liable—
- (a) on summary conviction, to such fine or such term of imprisonment as he or she would be liable to if he or she were convicted summarily of the offence of perjury or both, or 25
  - (b) on conviction on indictment, to such fine or such term of imprisonment as he or she would be liable to if he or she were convicted on indictment of the offence of perjury or both.
- (7) In this section—
- “record of proceedings in court” means a contemporaneous record of proceedings in court made, in accordance with rules of court, by any means, including any sound or other recording capable of being reproduced in legible, audible or visual form; 30
  - “transcript”, in relation to a record of proceedings in court, means a transcript of the record of such proceedings that is made by a person appointed by the Courts Service for that purpose in accordance with rules of court. 35

**Failure or refusal by complainant to cooperate with panel of inquiry**

57. (1) Where, at any time during the course of an investigation, a panel of inquiry investigating a complaint under this Chapter, considers that the complainant has failed or refused to make reasonable efforts to cooperate with the investigation, the panel of

inquiry shall prepare, and submit to the Judicial Conduct Committee, a report of such failure or refusal to cooperate and may suspend its investigation pending receipt of a direction from the Judicial Conduct Committee under *subsection (2)*.

- (2) The Judicial Conduct Committee shall, after considering a report received by it under *subsection (1)*, give a direction to the panel of inquiry to— 5
- (a) proceed with the investigation to which the report relates, or
  - (b) discontinue that investigation.
- (3) If the Judicial Conduct Committee directs a panel of inquiry under *subsection (2)* to discontinue the investigation of a complaint—
- (a) the complaint shall be deemed to have been withdrawn by the complainant and no further action shall be taken in relation thereto, and 10
  - (b) the Registrar shall notify the complainant and the judge concerned thereof in writing.

### **Failure or refusal by judge concerned to cooperate with panel of inquiry**

58. (1) Where the judge concerned fails or refuses without reasonable excuse to cooperate with an investigation of a complaint under this Chapter, the panel of inquiry may, if it considers it appropriate in all the circumstances, decide to discontinue the investigation. 15
- (2) If an investigation is discontinued under *subsection (1)*, the panel of inquiry shall prepare, and submit to the Judicial Conduct Committee, a report in writing setting out the circumstances of the failure or refusal of the judge concerned to cooperate and— 20
- (a) shall recommend the issuing of a reprimand to the judge concerned in respect of his or her failure or refusal to cooperate, and
  - (b) may make such recommendations as the panel of inquiry considers necessary for the purposes of safeguarding the administration of justice. 25
- (3) Without prejudice to the generality of *subsection (2)*—
- (a) a recommendation under *paragraph (a)* of that subsection shall provide for one or more of the following:
    - (i) the issuing of advice to the judge concerned;
    - (ii) the making of a recommendation to the judge concerned as to a course of action to be pursued by that judge, including his or her attendance at a specified type of course or training; 30
    - (iii) the issuing of an admonishment to the judge concerned,and
  - (b) a recommendation under *paragraph (b)* of that subsection may include a recommendation to which *section 63(6)* applies. 35
- (4) *Sections 64* and *65* shall, with any necessary modifications, apply to a report of a panel of inquiry under *subsection (2)* as they apply to an interim report or a final report of a panel of inquiry referred to in those sections.

- (5) The Judicial Conduct Committee shall consider the report received from the panel of inquiry under *subsection (2)* and shall make such determination in relation to the investigation of the complaint concerned as it considers appropriate and, in doing so, may accept, with or without modification, or reject any recommendation contained in that report. 5
- (6) The Registrar shall, as soon as practicable after the Judicial Conduct Committee makes a determination under *subsection (5)*, notify the judge concerned and the complainant in writing of— 10
  - (a) the determination of the Judicial Conduct Committee, and
  - (b) the reasons therefor. 10

**Matter before panel of inquiry concerning health of judge**

- 59.** (1) Where during the course of an investigation by a panel of inquiry under this Chapter, the panel of inquiry forms the view that the conduct that is the subject of the complaint under investigation may be related to the health (whether physical or mental) of the judge concerned, the panel of inquiry shall, having given the judge concerned an opportunity to address the matter, prepare, and submit to the Judicial Conduct Committee, a report in writing stating that view and the reasons therefor. 15
- (2) Where the judge concerned informs the panel of inquiry that he or she has taken, or is taking, steps to address the matter related to his or her health referred to in *subsection (1)*, the panel of inquiry shall specify those steps in its report under that subsection. 20
- (3) The Judicial Conduct Committee, upon receiving a report under *subsection (1)*, shall as soon as practicable thereafter—
- (a) where the judge concerned is an ordinary judge of the Supreme Court, submit the report to the Chief Justice,
  - (b) where the judge concerned is an ordinary judge of the Court of Appeal, the High Court or the Circuit Court or a specialist judge of the Circuit Court or a judge of the District Court other than the President of that Court, submit the report to the President of the Court of which the judge concerned is a judge, 25
  - (c) where the judge concerned is 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, submit the report to the Chief Justice, or 30
  - (d) where the judge concerned is the Chief Justice, submit the report to the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court and the President of the District Court.
- (4) In the circumstances referred to in *subsection (2)*, the investigation of the complaint concerned shall be discontinued and the Registrar shall notify the complainant and the judge concerned thereof in writing. 35
- (5) Where a panel of inquiry makes a report under *subsection (1)* and the circumstances referred to in *subsection (2)* do not apply, it shall adjourn the investigation of the complaint concerned and the registrar to the panel of inquiry shall notify the complainant and the judge concerned in writing of the adjournment. 40

- (6) Other than in the circumstances referred to in *subsection (2)*, where the Chief Justice, 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 receives a report under *subsection (3)*, he, she or they, as the case may be, may—
  - (a) recommend to the judge concerned that—
    - (i) he or she seek medical or other specified assistance, or
    - (ii) take such other steps as the judge or judges who received the report consider appropriate,
 and
  - (b) prepare, and submit to the Judicial Conduct Committee, a report in relation to the making of the recommendation under *paragraph (a)*.
- (7) If a judge to whom a recommendation is made under *subsection (6)(a)* complies with the recommendation, the investigation of the complaint concerned shall be discontinued and the Registrar shall notify the complainant and the judge concerned thereof in writing.
- (8) If a judge to whom a recommendation is made under *subsection (6)(a)* does not comply with the recommendation, the judge or judges who made the recommendation shall prepare, and submit to the Judicial Conduct Committee, a report in relation to the judge's not complying with that recommendation.
- (9) The Judicial Conduct Committee may, upon receiving a report under *subsection (8)*, direct the panel of inquiry to continue the investigation of the complaint concerned.
- (10) Where the Judicial Conduct Committee gives a direction under *subsection (9)*, the Registrar shall notify the complainant and the judge concerned thereof in writing.

**If judge concerned consents to reprimand by Judicial Conduct Committee before conclusion of investigation**

- 60. (1) Where, before or during an investigation of a complaint by a panel of inquiry under this Chapter, the judge concerned informs the panel of inquiry that, in relation to the complaint, he or she consents to the issuing of a reprimand to him or her, the panel of inquiry may, if it considers it appropriate having regard to the nature, gravity and circumstances of the complaint and the need to safeguard the administration of justice—
  - (a) adjourn the investigation of the complaint in accordance with *section 62*, and
  - (b) prepare, and submit to the Judicial Conduct Committee, a report in relation to the complaint.
- (2) *Section 63* shall, notwithstanding the fact that an investigation of a complaint to which this section applies has not concluded, apply in relation to a report referred to in *subsection (1)(b)* with any necessary modifications.

### **Withdrawal of complaint while it is being investigated by panel of inquiry**

61. (1) Where a complaint is withdrawn by the complainant during the course of an investigation under this Chapter, the panel of inquiry appointed to conduct the investigation may, with the consent of the Judicial Conduct Committee, either—
- (a) decide that no further action should be taken in relation to the complaint, or 5
  - (b) decide to proceed with the investigation as if the complaint had not been withdrawn.
- (2) Where a panel of inquiry makes a decision under *subsection (1)(b)*, the panel of inquiry shall continue with the investigation of the complaint concerned as if that complaint had not been withdrawn and that investigation shall be deemed to have been initiated under *section 46* and treated for all purposes as having been so initiated. 10
- (3) The Registrar shall notify the complainant and the judge concerned in writing of a decision under *subsection (1)* as soon as practicable after the making of the decision.

### **Adjournment of investigation of complaint by panel of inquiry**

62. (1) A panel of inquiry may adjourn an investigation of a complaint under this Chapter at any time during the course of the investigation if it appears to the panel of inquiry to be appropriate to so do. 15
- (2) Where a panel of inquiry adjourns an investigation of a complaint under *subsection (1)*, it may—
- (a) resume the investigation at any time, or 20
  - (b) prepare, and submit to the Judicial Conduct Committee, an interim report in writing specifying the reasons for the adjournment of the investigation.
- (3) The Judicial Conduct Committee shall, as soon as practicable after receiving an interim report under *subsection (2)(b)*, consider the interim report and give a direction in writing to the panel of inquiry requiring it to— 25
- (a) resume the investigation of the complaint concerned, or
  - (b) discontinue that investigation.
- (4) Where the Judicial Conduct Committee gives a direction under *subsection (3)(b)* to the panel of inquiry requiring it to discontinue the investigation of the complaint concerned under this Chapter, the Registrar shall, as soon as practicable thereafter, notify the judge concerned and the complainant in writing of— 30
- (a) that direction, and
  - (b) the reasons therefor.

### **Report of panel of inquiry submitted to Judicial Conduct Committee**

63. (1) A panel of inquiry shall, upon its completing an investigation of a complaint under this Chapter, prepare, and submit to the Judicial Conduct Committee, a report in writing of the investigation. 35
- (2) A report of a panel of inquiry under *subsection (1)* shall specify—



- (a) particulars of the complaint,
  - (b) the evidence (if any) in relation to the complaint presented to the panel of inquiry, and
  - (c) the findings of the panel of inquiry in relation to the complaint.
- (3) Where a panel of inquiry finds that an allegation in a complaint has been proved, the report of the panel of inquiry under *subsection (1)* shall include the reasons for that finding and— 5
- (a) such recommendations as the panel of inquiry considers appropriate for reprimanding the judge concerned, and
  - (b) such recommendations (if any) as the panel of inquiry considers necessary for the purposes of safeguarding the administration of justice. 10
- (4) Where a panel of inquiry finds that an allegation in a complaint has not been proved, the report of the panel of inquiry under *subsection (1)* shall include the reasons for that finding.
- (5) Without prejudice to the generality of *subsections (2)* and *(3)*, a recommendation under *subsection (3)(a)* shall provide for any one or more of the following: 15
- (a) the issuing of advice to the judge concerned;
  - (b) the making of a recommendation that the judge concerned pursue a specified course of action, including attending a course or training of a specified type;
  - (c) the issuing of an admonishment to the judge concerned. 20
- (6) Without prejudice to the generality of *subsections (2)* and *(3)*, a recommendation under *subsection (3)(b)*—
- (a) may be made to—
    - (i) the Chief Justice, where the judge concerned is an ordinary judge of the Supreme Court, 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, 25
    - (ii) the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court and the President of the District Court, where the judge concerned is the Chief Justice, or 30
    - (iii) the President of the court of which the judge concerned is a judge, in the case of a judge other than a judge to whom *subparagraph (i)* or *(ii)* applies,
  - or
  - (b) may recommend that changes be made to court procedures, practice directions, distribution of work or may also concern related matters, 35
- or both.

### **Draft report to be sent to complainant and judge concerned**

64. (1) The registrar to a panel of inquiry shall, before the panel of inquiry submits an interim report or a final report to the Judicial Conduct Committee in relation to an investigation of a complaint under this Chapter, send a draft of the report to—
- (a) the judge concerned, and 5
  - (b) the complainant.
- (2) The draft of a report referred to in *subsection (1)* shall be accompanied by a notice from the panel of inquiry specifying the period within which submissions or requests may be made to the panel of inquiry under *section 65(1)*.

### **Amendment of draft report**

65. (1) A complainant or the judge concerned who receives a draft report from the registrar to a panel of inquiry under *section 64* and who believes that the panel of inquiry has not observed fair procedures in relation to him or her may, within the period specified in a notice under that section, submit to the registrar to the panel of inquiry a statement in writing setting out the reasons for his or her belief and a request to the panel of inquiry to review the draft report having regard to the statement. 15
- (2) Where a panel of inquiry does not receive a statement under *subsection (1)* within the period specified in the notice under *section 64*, it shall, as soon as practicable after the expiration of that period, submit its report to the Judicial Conduct Committee.
- (3) Where a panel of inquiry receives a statement under *subsection (1)*, it may, after considering the statement and reviewing the draft report— 20
- (a) amend the draft report to take account of the statement received, or
  - (b) decline to make any amendments to the draft report.
- (4) A statement received by a panel of inquiry under *subsection (1)* shall be attached to the report submitted to the Judicial Conduct Committee under *section 63*. 25
- (5) If a draft report is not amended, or is only partially amended, to take account of a statement received under *subsection (1)*, the reasons for that shall be included in the report submitted to the Judicial Conduct Committee under *section 63*.

### **Determination of complaint by Judicial Conduct Committee**

66. (1) The Judicial Conduct Committee shall, as soon as practicable after receiving a report under *section 63* from a panel of inquiry in relation to a complaint that was the subject of an investigation, notify the complainant and the judge concerned in writing that he or she may make submissions, in writing or orally, to the Committee within such period as is specified in the notification in relation to the recommendations that may be included in the report under *subsection (3)* of that section. 30
- (2) The Judicial Conduct Committee shall, as soon as practicable after the expiration of the period specified in a notification under *subsection (1)*— 35
- (a) consider—
    - (i) the report received from the panel of inquiry under *section 63*, and

- (ii) any submissions made by the complainant or the judge concerned pursuant to a notification under *subsection (1)*,
- and
- (b) make such determination of the complaint concerned as it considers appropriate, including whether or not the complaint has been substantiated. 5
- (3) The Judicial Conduct Committee may, for the purposes of—
  - (a) assisting it in making a decision under *subsection (2)*, or
  - (b) observing fair procedures,
 conduct a hearing in relation to a complaint that has been the subject of an investigation to which a report under *section 63* relates if, having regard to all the circumstances, it considers it appropriate to do so. 10
- (4) *Subsections (5) to (7) of section 55* shall apply to a hearing under *subsection (3)* as they apply to a hearing of a complaint under that section with the following and any other necessary modifications:
  - (a) references to a panel of inquiry shall be construed as references to the Judicial Conduct Committee; 15
  - (b) references to the registrar to the panel of inquiry shall be construed as references to the Registrar.
- (5) A determination under *subsection (2)(b)*—
  - (a) shall be in writing, 20
  - (b) shall give the reasons for the determination, and
  - (c) may include any one or more of the matters referred to in *subsection (5) or (6) of section 63*.
- (6) In considering the report of a panel of inquiry and issuing a determination under *subsection (2)*, the Judicial Conduct Committee may accept, with or without modification, or reject any recommendation contained in the report submitted by the panel of inquiry to the Judicial Conduct Committee under *section 63*. 25
- (7) Where a determination made by the Judicial Conduct Committee under *subsection (2)* requires no action to be taken by the judge concerned or is to the effect that the complaint has not been substantiated, the determination shall specify that the investigation of the complaint is concluded. 30
- (8) Where a determination made by the Judicial Conduct Committee under *subsection (2)* requires the judge concerned to take any action, the Judicial Conduct Committee may—
  - (a) require the judge concerned to report to the Judicial Conduct Committee in the manner specified by that Committee regarding his or her compliance with the requirement, and 35
  - (b) adjourn the matter for such period as the Committee considers appropriate and at the end of that period ascertain whether or not the determination has been complied with by the judge concerned. 40

- (9) The Registrar shall, as soon as practicable after the Judicial Conduct Committee makes a determination under *subsection (2)*, notify the judge concerned and the complainant in writing of—
  - (a) the determination of the Judicial Conduct Committee,
  - (b) the reasons therefor, and 5
  - (c) where a matter has been adjourned under *subsection (8)(b)*, the manner in which the judge is to report to the Judicial Conduct Committee and the period within which he or she shall do so.
  
- (10) Where the Judicial Conduct Committee receives a report from the judge concerned under *subsection (8)(a)* and is of opinion that the determination has been complied with, it shall notify the judge concerned and the complainant in writing that the investigation of the complaint is concluded. 10
  
- (11) Where the Judicial Conduct Committee—
  - (a) does not receive a report from the judge concerned under *subsection (8)(a)* within the period specified by the Judicial Conduct Committee under *subsection (9)(c)*, or 15
  - (b) receives a report from the judge concerned under *subsection (8)(a)* but is not satisfied that the determination has been complied with,

the Committee may take such further action as it considers appropriate in all the circumstances, including the making under *section 67* of a referral within the meaning of that section to the Minister in relation to the judge concerned or the inclusion of a reference to the name of the judge concerned in its annual report under *section 73*. 20
  
- (12) Where a hearing relating to the investigation of a complaint has been held wholly or partly in public, the Judicial Conduct Committee may, for the purposes of safeguarding the administration of justice, decide to publish, or cause to be published, a determination under *subsection (2)* taking account of the extent to which the identities of the judge concerned and of the complainant or either of them have already been made public. 25

**Referral by Judicial Conduct Committee to Minister of matter relating to conduct or capacity of judge for Article 35.4 purposes** 30

67. (1) (a) In this section an “Article 35.4.1° motion”, in relation to a judge, means a motion that is proposed in either House of the Oireachtas pursuant to the rules and standing orders for the time being in force of that House for the purpose of seeking a resolution of that House under subsection 1° of section 4 of Article 35 of the Constitution calling for the removal from office of the judge for stated misbehaviour or incapacity within the meaning of that subsection. 35
- (b) For the avoidance of doubt references in this section to an Article 35.4.1° motion may—
- (i) by virtue of section 39 of the Courts of Justice Act 1924, relate to a judge of the Circuit Court, and 40

- (ii) by virtue of section 20 of the Courts of Justice (District Court) Act 1946, relate to a judge of the District Court.
- (2) Where the Judicial Conduct Committee determines in accordance with this section that a matter relating to the conduct or capacity of a judge (whether or not arising from a complaint) requires the referral of the matter to the Minister under this section (in this section referred to as a “referral”), the Committee shall make a referral in relation to the judge. 5
- (3) Where at any time during the course of an investigation by a panel of inquiry of—
- (a) a complaint under this Part, or
- (b) a matter relating to the conduct of a judge under *section 46*, 10
- the panel of inquiry forms the opinion that a matter disclosed by the investigation relating to the conduct or capacity of the judge concerned is of such gravity as would justify a referral by the Judicial Conduct Committee in relation to that judge, the panel of inquiry shall prepare, and submit to the Judicial Conduct Committee, a report in writing in relation to the matter under this subsection. 15
- (4) Where the Judicial Conduct Committee makes a referral in relation to a judge, the Minister shall, as soon as practicable thereafter, propose an Article 35.4.1° motion in either House of the Oireachtas in respect of the judge (unless he or she sooner ceases to be a judge).
- (5) Where a panel of inquiry makes a report under *subsection (3)* it shall adjourn the investigation of the complaint or matter concerned and, in the case of a complaint, the registrar to the panel of inquiry shall notify the complainant in writing of the adjournment. 20
- (6) A report under *subsection (3)* shall—
- (a) record the opinion of the panel of inquiry referred to in that subsection, 25
- (b) the reasons for that opinion, and
- (c) recommend to the Judicial Conduct Committee that it make a referral in relation to the judge concerned.
- (7) The Judicial Conduct Committee shall, as soon as practicable after receiving a report under *subsection (3)*, send a copy of the report to the judge concerned, together with a notice specifying the period within which the judge may make submissions in relation to the report. 30
- (8) Submissions to the Judicial Conduct Committee by a judge in relation to a report under *subsection (3)* shall be in writing.
- (9) The Judicial Conduct Committee shall, as soon as practicable after the expiration of the period specified in the notice referred to in *subsection (7)*, consider the report received from the panel of inquiry under *subsection (3)* and the submissions (if any) made by the judge concerned. 35
- (10) If the Judicial Conduct Committee is satisfied that a referral is required in relation to the judge concerned, the Committee shall, as soon as practicable, furnish to the Minister— 40

- (a) the report received from the panel of inquiry under *subsection (3)*,
  - (b) the submissions (if any) made by the judge concerned in relation to that report, and
  - (c) the views (if any) of the Judicial Conduct Committee with regard to the report referred to in *paragraph (a)* and the submissions (if any) referred to in *paragraph (b)*. 5
- (11) The Registrar shall, as soon as practicable after the Judicial Conduct Committee complies with *subsection (10)*, notify the judge concerned in writing thereof and shall provide him or her with a copy of the views (if any) of the Judicial Conduct Committee with regard to the report under *subsection (3)* or submissions made by that judge in relation to that report. 10
- (12) The documents referred to in *subsection (10)* shall not accompany an Article 35.4.1° motion proposed in either House of the Oireachtas or an Article 35.4.1° motion in respect of the judge concerned in the other House of the Oireachtas but the Minister may use those documents, for the purposes of proposing an Article 35.4.1° motion in respect of the judge concerned in either such House, to state the matters upon which it is contended that the judge concerned should be removed from office. 15
- (13) If the Judicial Conduct Committee is not satisfied that the recommendation referred to in *paragraph (c)* of *subsection (6)* made by the panel of inquiry in its report under *subsection (3)* should be accepted, the Committee shall direct the panel of inquiry to continue the investigation of the complaint or matter concerned with a view to its preparing and submitting to the Committee a report thereof under *section 63*. 20
- (14) Where a referral is made following the investigation of a complaint under this Part, the Registrar shall notify the complainant in writing of the referral as soon as practicable after an Article 35.4.1° motion has been proposed by the Minister in Dáil Éireann or Seanad Éireann, as the case may be, in respect of the judge concerned. 25
- (15) A statement or admission made by the judge concerned or evidence given to a panel of inquiry or a submission made to a panel of inquiry or to the Judicial Conduct Committee under this Part shall not be admissible—
- (a) in any proceedings in either House of the Oireachtas, or 30
  - (b) before a committee of either such House or of both such Houses,
- in relation to an Article 35.4.1° motion in respect of the judge concerned.

## CHAPTER 6

### *Miscellaneous provisions relating to Judicial Conduct Committee and panels of inquiry*

#### **Evidence given not admissible in certain proceedings**

**68.** None of the following shall be admissible in evidence against a person in any criminal or other proceedings, except in proceedings for an offence under *section 56(4)* against a person:

- (a) a statement or admission made by the person to the Judicial Conduct Committee or a panel of inquiry under this Part; 40

- (b) a document given or sent to the Judicial Conduct Committee or a panel of inquiry pursuant to a direction or request from the Judicial Conduct Committee or the panel of inquiry, as the case may be, to the person under this Part.

**Proceedings to be heard otherwise than in public**

- 69.** (1) Subject to this Act, proceedings relating to the investigation of a complaint under this Part shall be conducted otherwise than in public. 5
- (2) Any proceedings before a court arising out of or connected with a complaint, the admissibility of a complaint, an investigation of a complaint under this Part or the determination of such an investigation shall be conducted otherwise than in public.
- (3) A person (including a member of a panel of inquiry or the Judicial Conduct Committee) shall not disclose or publish any evidence given or the contents of any document produced by a witness while giving evidence to the panel of inquiry or the Judicial Conduct Committee otherwise than in public under this Part, except— 10
- (a) as directed by a court,
  - (b) in accordance with *section 70*, or 15
  - (c) to the extent otherwise necessary in the interests of fair procedures and with the consent in writing of the chairperson of the panel of inquiry or the chairperson of the Judicial Conduct Committee, as may be appropriate.
- (4) *Subsection (3)* shall not operate to prohibit the publication in a report under this Act of any findings by a panel of inquiry made on the basis of evidence given otherwise than in public. 20
- (5) A person who contravenes *subsection (3)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

**Duty to disclose substance of evidence to other witnesses, etc.** 25

- 70.** (1) Subject to *subsection (2)*, a panel of inquiry shall disclose to a person—
- (a) who is directed to attend as a witness before the panel of inquiry,
  - (b) who attends voluntarily to give evidence to the panel of inquiry, or
  - (c) about whom evidence is given to the panel of inquiry,
- the substance of any evidence in the possession of the panel of inquiry that, in the opinion of the panel of inquiry, the person should be aware of for the purposes of the evidence that the person may give to the panel of inquiry. 30
- (2) *Subsection (1)* does not require the disclosure of the source of any evidence given or document produced by a witness while giving evidence otherwise than in public under this Part, unless the panel of inquiry considers that, in view of the purposes of the investigation or in the interests of fair procedures, the source should be disclosed. 35
- (3) A panel of inquiry shall give a person to whom it discloses the substance of evidence under *subsection (1)* an opportunity to comment by written or oral submissions on the evidence.

### **Privileges and immunities of witnesses**

71. A person who gives evidence to a panel of inquiry or the Judicial Conduct Committee, or who produces or sends a document to a panel of inquiry or the Judicial Conduct Committee, as directed by the panel of inquiry or the Judicial Conduct Committee, as the case may be— 5
- (a) has the same immunities and privileges in respect of that evidence or those documents, and
  - (b) is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

### **Remuneration and expenses of members of Judicial Conduct Committee and panel of inquiry** 10

72. (1) Each *ex officio* member of the Judicial Conduct Committee and each elected member of the Judicial Conduct Committee shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine. 15
- (2) A member of a panel of inquiry who is a judge shall be paid such allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (3) Each lay member of the Judicial Conduct Committee and each lay member of a panel of inquiry shall be paid such remuneration (if any) and such allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine. 20

### **Annual report of Judicial Conduct Committee**

73. (1) The Judicial Conduct Committee shall, not later than 6 months after the end of each financial year of the Council, prepare, and submit to the Council and the Minister, a report in writing of its activities during that year. 25
- (2) If, under *subsection (1)*, the first report under that subsection would relate to a period of less than 6 months, that report shall, notwithstanding that subsection, instead relate to the activities of the Judicial Conduct Committee during that period and the financial year of the Council immediately following that period and the Judicial Conduct Committee shall prepare, and submit to the Council and the Minister, that first report as soon as may be, but not later than 6 months, after the end of that financial year. 30
- (3) The Minister shall, as soon as may be after the receipt by him or her of a report under *subsection (1)*, cause copies thereof to be laid before each House of the Oireachtas. 35
- (4) Subject to *subsection (5)*, a report under *subsection (1)* shall include information on the performance of the functions of the Judicial Conduct Committee during the period to which it relates and, without prejudice to the generality of the foregoing, shall specify in respect of that period—
- (a) the number of complaints received, 40



- (b) the number of complaints determined to be admissible by the Registrar,
  - (c) the number of complaints considered, and the number of complaints determined to be admissible, by the Complaints Review Committee,
  - (d) the number of complaints resolved by informal means in accordance with *Chapter 4*, 5
  - (e) the number of investigations initiated pursuant to a referral under *section 46*,
  - (f) the number of investigations conducted by a panel of inquiry under this Part of complaints or consequent on a referral under *section 46*,
  - (g) the number of complaints considered by the Judicial Conduct Committee that were not substantiated, 10
  - (h) the number of determinations made by the Judicial Conduct Committee under *section 58(5)* or *66*,
  - (i) the number of cases in which a reprimand was issued by the Judicial Conduct Committee under *section 58(5)* for the failure or refusal of the judge concerned to cooperate with an investigation of a complaint or matter by a panel of inquiry, 15
  - (j) the number of judges who consented to the issuing of reprimands to them in accordance with *section 45* or *60*, and
  - (k) the number of complaints that were withdrawn in the circumstances referred to in *section 44* or *61*.
- (5) The Judicial Conduct Committee shall not include, or cause to be included, in a report under this section any information that would identify, or could reasonably be expected to identify— 20
- (a) the judge concerned, or
  - (b) the complainant,
- except that the name of the judge concerned to whom a reprimand was issued under *section 58* or to whom *section 66(11)* applies may be included in the report. 25
- (6) The Judicial Conduct Committee shall, as soon as practicable after copies of a report under *subsection (1)* are laid before both Houses of the Oireachtas under *subsection (3)*, publish the report, or cause the report to be published, in such manner as the Committee considers appropriate. 30

## PART 6

### MISCELLANEOUS

#### **Power of Oireachtas to remove judge from office unaffected**

- 74.** Nothing in this Act shall be construed as affecting the operation of section 4 of Article 35 of the Constitution. 35

## **Independence of court and judicial functions**

75. Nothing in this Act shall be construed as operating to interfere with—

- (a) the performance by the courts of their functions, or
- (b) the exercise by a judge of his or her judicial functions.

## **Restriction of Freedom of Information Act 2014**

5

76. (1) Without prejudice to the exemption for records held by the courts, the Freedom of Information Act 2014 shall not apply to a record relating to the making or investigation, or the resolution by informal means, of a complaint under *Part 5* or an investigation pursuant to a referral under *section 46* unless—

- (a) the record was created before the making of the complaint or the initiation of the investigation under *section 46*, as the case may be, or 10
- (b) the record relates to the expenses of the Judicial Conduct Committee or a member thereof or a panel of inquiry or a member thereof or other matters concerning the general administration of that Committee or a panel of inquiry.

(2) *Subsection (1)* applies to a record held by— 15

- (a) the Judicial Conduct Committee,
- (b) the Registrar,
- (c) the Complaints Review Committee,
- (d) a designated judge or designated judges,
- (e) a panel of inquiry, or 20
- (f) the registrar to a panel of inquiry.

(3) In this section “record” has the meaning it has in the Freedom of Information Act 2014.

## **Restriction of Data Protection Act 1988**

77. Section 4 of the Data Protection Act 1988 shall not apply to data processed within the meaning of that Act by— 25

- (a) the Judicial Conduct Committee,
- (b) the Registrar,
- (c) the Complaints Review Committee,
- (d) a designated judge or designated judges, 30
- (e) a panel of inquiry, or
- (f) the registrar to a panel of inquiry,

in connection with the performance of its, his, her or their functions under this Act insofar as those functions relate to the investigation, or the resolution by informal means, of a complaint under *Part 5* or an investigation pursuant to a referral under *section 46*. 35

**Notification to Courts Service of decisions made and actions taken by Council**

- 78.** Where a decision made or an action taken by the Council relates to the performance by the Courts Service of its functions, the Council shall notify the Courts Service in writing of the decision or action.

**Amendment of Courts Service Act 1998**

5

- 79.** The Courts Service Act 1998 is amended by the insertion of the following section after section 5A:

**“Decisions and actions of Judicial Council notified to Service**

- 5B.** The Service shall, in the performance of its functions, have regard to the decisions made and actions taken by the Judicial Council notified to it under *section 78* of the *Judicial Council Act 2017*.”

10

An Bille um Chomhairle na mBreithiúna,  
2017

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# BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do dhéanamh socrú maidir le comhlacht a bhunú ar a dtabharfar Comhairle na mBreithiúna nó, sa Bhéarla, *the Judicial Council*; do dhéanamh socrú maidir lena feidhmeanna; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*An Seanadóir Diarmuid Ó Buitiméir a thíolaic thar ceann an Tánaiste agus Aire Dlí agus Cirt agus Comhionannais,*

*30 Bealtaine, 2017*

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Judicial Council Bill 2017

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# BILL

(as initiated)

entitled

An Act to provide for the establishment of a body to be known as *Comhairle na mBreithiúna* or, in the English language, the Judicial Council; to provide for its functions and for related matters.

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*Presented by Senator Jerry Buttimer on behalf of the Tánaiste and Minister for Justice and Equality,*

*30th May, 2017*

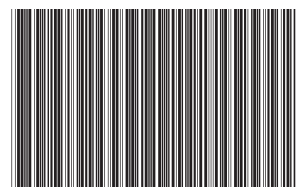
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