**Questionnaire on the Independence of Judges and Lawyers**

**Response of Ireland**

**1. Please indicate whether there is national body or mechanism in charge of selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other)?**

Judges are appointed by the President under Article 35.1 of the Constitution. This is a function to be carried out only on the advice of the Government under Article 13.9. This is a constitutional function of the Government that cannot be transferred or delegated

**Judicial Appointments Advisory Board (JAAB):**

The Judicial Appointments Advisory Board was established under the Courts and Court Officers Act 1995, as amended, to identify persons and inform the Government of the suitability of those persons for appointment to judicial office. (<http://www.irishstatutebook.ie/eli/1995/act/31/enacted/en/html>)

When a judicial vacancy arises the Minister for Justice and Equality writes to the JAAB to request a list of suitable candidates for nomination for appointment by the President to judicial office. The JAAB considers the relevant applications it has received and provides a list of recommended candidates (at least 7 candidates) to the Minister.

**2. Please provide information on the composition of the body or mechanism (number and qualification of members), the procedure for the appointment of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget)**

Membership and procedures of the Judicial Appointments Advisory Board are set out in Part IV of the 1995 Act.

The JAAB consists of 11 members;

* Chief Justice (Chairperson)
* President of the Court of Appeal
* President of the High Court
* President of the Circuit Court
* President of the District Court
* The Attorney General
* Nominee of the Bar Council
* Nominee of the Law Society
* 3 Lay members (nominated by the Minister for Justice)

The Bar Council and Law Society nominees and the three lay members have a term of membership of three years and are eligible for re-appointment.

The CEO of the Courts Service is Secretary to the JAAB.

The JAAB is empowered to adopt such procedures as it thinks fit to carry out its functions and specifically to advertise, to require completion of application forms and invite persons to submit their names for consideration, to consult persons regarding suitability of applicants, to arrange for interviews etc.

**Judicial Appointments Commission Bill 2017:**

On 30 May 2017, the Government approved the publication of the Judicial Appointments Commission Bill 2017.

The Bill is intended to give effect to commitments in the Programme for Partnership Government, a programme for Government document published by the Government in May 2016, and its main features are to replace the existing Judicial Appointments Advisory Board with a new Judicial Appointments Commission (JAC).

The Bill published on 1 June 2017 provides for a 13-member JAC comprising the Chief Justice, the President of the Court of Appeal and the President of the High Court, the Attorney General, the Law Society and Bar Council nominees, and 7 lay members. It adds a new structure whereby a direct decision making role for each Court President is retained as in the current JAAB process. It does this by enabling the JAC to act in the form of a relevant 11 member committee, of which there are 5, one relevant committee for each of the 5 Courts, (Supreme Court, Court of Appeal, High, Circuit and District). Depending on what court vacancy is being considered, the relevant committee will include the President (or his or her nominee) of the court to which the vacancy relates.

The Bill will reduce the number of suitable candidates proposed by the Commission for each judicial vacancy to three candidates from the stipulated minimum of 7 now under the existing system. The Bill comprehends all judicial appointments including promotions of serving judges.

A new Senior Judicial Appointments Advisory Committee comprising the Lay Chairperson, the Chief Justice and the Attorney General will make recommendations to the Minister for appointment to the top three judicial positions of Chief Justice, President of the Court of Appeal and President of the High Court.

Merit is provided for as the criterion for selection and, subject to that, the Bill provides for the objectives that the judiciary should be equally comprised of men and women and that it should reflect the diversity within the population as a whole.

**3. Please provide detailed information on the legislation and practice existing in your country in relation to:**

* 1. **The selection and appointment of candidates for judicial office and the criteria used for their selection and appointment (e.g. qualifications, integrity, ability and efficiency);**

Qualifications for appointment as a judge are as follows;

***Ordinary Judge of the District Court***

In accordance with section 29 of the Courts (Supplemental Provisions) Act, 1961, as amended by section 6 of the Courts and Court Officers Act, 2002, the following persons shall be qualified for appointment as a Judge of the District Court;

(a) a person who is in the time being a practising barrister or a practising solicitor of not less than ten years standing.

(b) a barrister or solicitor who actually practised his/her profession for not less than ten years, if for the time being s/he holds an office in respect of which it was, at the time of his/her appointment thereto, required by statute that every person appointed thereto should be or should have been;

(i) a practising solicitor or,

(ii) a practising barrister or solicitor.

Where a person has practised as a barrister and as a solicitor, such periods of practice may be aggregated and reckoned to satisfy the minimum practice requirements for appointment as a Judge.

***Ordinary Judge of the Circuit Court***

Under section 17 of the Courts (Supplemental Provisions) Act, 1961, as amended by section 2(2) of the Courts Act, 1973, section 30 of the Courts and Court Officers Act, 1995, section 5 and 6 of the Court and Court Officers Act, 2002 and section 188 of the Personal Insolvency Act 2012, a person who is a practising barrister or practising solicitor of not less than 10 years standing is qualified for appointment as a Judge of the Circuit Court.

a) a Judge of the District Court is qualified for appointment as a Judge of the Circuit Court

b) a county registrar who practised as a barrister or a solicitor for not less than ten years before he or she was appointed to be a county registrar is qualified for appointment as a Judge of the Circuit Court.

c) a specialist judge of the Circuit Court is qualified for appointment as a judge of the Circuit Court.

d) where a person has practised as both a barrister and a solicitor, such periods of practice may be aggregated and reckoned to satisfy the minimum practice requirements for appointment as a judge.

***Ordinary Judge of the Superior Courts***

Section 5 of the Courts (Supplemental Provisions) Act, 1961, as amended by the Courts and Court Officers Act, 1995, the Courts and Court Officers Act, 2002 and the Court of Appeal Act, 2014, provides that the following persons shall be qualified for appointment as a Judge of the Superior Courts:

(a) Subject to paragraphs (b) and (c) of this subsection, a person shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court if the person is for the time being a practising barrister or a practising solicitor of not less than 12 years' standing who has practised as a barrister or a solicitor for a continuous period of not less than 2 years immediately before such appointment.

(b) A person who—

(i) is or was at any time during the period of 2 years immediately before the appointment concerned—

(I) a judge of the Court of Justice of the European Communities,

(II) a judge of the Court of First Instance attached to that Court,

(III) an Advocate-General of the Court of Justice of the European Communities,

(IV) a judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,

(V) a judge of the International Court of Justice established under the Charter of the United Nations,

(VI) a judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,

(VII) a judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998,

and

(ii) was a practising barrister or a practising solicitor before appointment to any of the offices referred to in subparagraph (i) of this paragraph, shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court.

(c) A judge of the Circuit Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the Supreme Court, the Court of Appeal or the High Court

(3) An ordinary judge of the Supreme Court shall be qualified for appointment as President of the High Court, President of the Court of Appeal or as Chief Justice.

(4) The President of the Court of Appeal shall be qualified for appointment as an ordinary judge of the Supreme Court or as Chief Justice.

(5) An ordinary judge of the Court of Appeal shall be qualified for appointment as an ordinary judge of the Supreme Court or as President of the High Court, President of the Court of Appeal or as Chief Justice

(6) The President of the High Court shall be qualified for appointment as an ordinary judge of the Court of Appeal or of the Supreme Court or as President of the Court of Appeal or Chief Justice.

(7) An ordinary judge of the High Court shall be qualified for appointment as an ordinary judge of the Court of Appeal or of the Supreme Court or as President of the High Court, President of the Court of Appeal or Chief Justice.

* 1. **Condition of service and security of tenure of judges;**

The retirement age for Judges of the Circuit Court, High Court, Court of Appeal and Supreme Court is 70 years. Judges of the District Court can retire at age 65 years but have the option to continue on a year-to-year basis to the age of 70 years. (The retirement age of District Court judges is intended to be raised to 70 years as part of the Judicial Appointment Commission Bill)

Article 35.4.1 provides for the removal of judges from office:

“4 1° A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.”

No judge has ever been removed from office to date.

* 1. **Promotion of judges;**

The JAAB does not deal with the promotion of serving judges. There is an informal system by which judges provide expressions of interest in promotions to the Attorney General who brings these to the attention of Government in advance of any judicial appointment as appropriate. The JAC will cover all judicial appointments including promotion of serving judges.

* 1. **Transfer of judges;**

If a judge is assigned to a District they may not be transferred to another District without their consent – as provided under the Sixth Schedule of the Courts (Supplemental Provisions) Act 1961 as amended. (http://www.irishstatutebook.ie/eli/1961/act/39/schedule/6/enacted/en/html#sched6 )

If a judge is assigned to a District, the Government, at his/her request, may terminate their assignment to that District.

If a Circuit Court judge is assigned to a Circuit they may not be transferred to another Circuit without their consent – as provided under section 20 of the Courts (Supplemental Provisions) Act 1961 as amended (<http://www.irishstatutebook.ie/eli/1961/act/39/section/20/enacted/en/html#sec20>)

* 1. **Disciplinary proceedings against judges**

**What is the role played by the national organ or mechanism with regard to the issues referred to above?**

The JAAB does not have a role in relation to disciplinary proceedings against judges.

**4. If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:**

**a. Judicial selection and appointment;**

**b. Transfer and promotion of judges;**

**c. Disciplinary proceedings against judges**

**c.** A Bill providing for the establishment of a Judicial Council was published on 1 June 2017 and is currently under consideration in Seanad Éireann (the Irish Senate). The Judicial Council Bill 2017 is a legislative priority for the Government.

The primary function of the Judicial Council will be to promote and maintain excellence in the exercise by judges of their judicial functions and high standards of conduct among judges. The Bill also provides for the establishment of a Board of the Council which will be responsible for carrying out the functions of the Council on a day-to-day basis. The Council will be assisted in its work by a Judicial Studies Committee which will have a role in facilitating the continuing education and training of judges and by a Sentencing Information Committee which will be involved in the collation and dissemination of sentencing information.

A key element of the Bill relates to the establishment of a Judicial Conduct Committee which will consider complaints in relation to judicial misconduct, prepare draft guidelines concerning judicial conduct and ethics for adoption by the Council and provide advice and recommendations to an individual judge or to judges generally on judicial conduct and ethics.