

The judicial workplace and the intersection of judicial independence

Fourth Study Commission questionnaire – 2023.

This is the response of the Association of Judges of Ireland to the questionnaire in respect of appointment to judicial office, promotion within the judiciary, workload within the judiciary, and removal from judicial office.

At the moment, the Judicial Appointments Commission Bill 2022 is going through the Oireachtas, the Irish parliament. This bill, if enacted and commenced, will significantly change the legal position in Ireland with regard to the first two of these topics, namely appointment to judicial office, and promotion within the judiciary. However, given the fact that the legislation has not been enacted, and the possibility that the legislation may be amended before enactment, the answers to the questionnaire are given on the basis solely of the current position.

Appointment to judicial office

A) The process for the appointment of a person to judicial office is the same in respect of lower courts, intermediate courts and superior courts. The process for appointment is identical in respect of criminal, civil or appellate courts. It involves an application by a person seeking to be appointed as a judge, and the consideration of that application by the Judicial Appointments Advisory Board (JAAB). The JAAB consists 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. The Attorney General also sits on the JAAB. The JAAB is further made up of a nominee of the Chairman of the Bar Council and a nominee of the President of the Law Society of Ireland, as well as ministerial nominees.

The purpose of the JAAB “is to identify persons and inform the government of the suitability of those persons for appointment to judicial office”: JAAB website.

Ultimately, the decision as to whether or not a person is appointed a judge is made by government. The JAAB provides the Minister for Justice with the name of every person who has applied to the Board and will further recommend at least seven persons for appointment to a vacant judicial office. The government must firstly consider for appointment those persons whose names have been recommended to the Minister by the JAAB. However, the government is not confined to those names in advising the President in relation to the appointment of a person to judicial office. Every person appointed to judicial office is appointed by the President, on the nomination of the government.

B) The process of appointment to judicial office is not independent of government. As explained, it is a process in which the advice of the government to the President is pivotal. Notwithstanding that, at least since the introduction of the JAAB on foot of the Courts and Court Officers Act 1995, it is doubtful that political influences bear upon the appointment of a particular person to judicial office.

C) There is no legislation which requires ethnic or gender diversity to be taken into account when appointment to judicial office is being made. This may change on the enactment of the Judicial Appointments Commission Bill 2022. However, as a matter of practice, gender diversity in particular may be taken into account by the government in recommending the appointment of an individual to the judiciary.

D) – already addressed.

2. Promotion within the judiciary

A to C) There is scope for promotion within the judiciary. A judge may indicate, by a note sent to the Attorney General, an interest in appointment to a higher court. It is then a matter for government as to whether or not a sitting judge is to be elevated to a superior court. In making that decision, government has available to it the advice of the Attorney General and

the views of the Minister for Justice. While the process cannot be described as a transparent one, it does not appear to be the case that political affiliation or political partisanship is relevant to promotion within the judiciary.

3. Workload within the judiciary

A) Judges of superior courts (namely the High Court, the Court of Appeal and the Supreme Court) sit throughout the four law terms. In 2024, for example, the law terms are scheduled to be as follows: -

Hilary: 11th January to 22nd March

Easter: 8th April to 16th May

Trinity: 29th May to 31st July

Michaelmas: 7th October to 28th December.

High Court judges and, where necessary, judges of the appellate courts will also sit for vacation duty when there are sufficiently urgent applications which must be addressed. In the High Court there is a vacation judge available for every day of the year, including weekends, holidays, and days such as Christmas Day. Judges of the Circuit Court will also sit during the law terms and, where necessary, for vacation duty. The District Court sits throughout the year, though individual judges of course have holiday arrangements.

B) If a judge is encountering difficulty keeping up his or her workload, ultimately the President of that judge's court (or, if it applies, the List Judge to whom the struggling judge is answerable) will reallocate workload so that the judge can catch up with judgments or any other arrears. Dealing with such difficulties on a case-by-case basis has proved to be effective.

C) Colleagues of the judge encountering difficulty keeping up with their workload would ordinarily be happy to assist the judge who is struggling. It would be expected that they would do so.

4. Removal from judicial office

A to B) The only regime currently available for the removal of a judge from office is that set out in Article 35.4 of the Constitution of Ireland, which states: -

“1. A judge of the Supreme Court, 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 or by Seanad Éireann calling for his removal”.

Notwithstanding the precise wording of the Constitution, it is clear that judges of the Circuit Court or District Court can only be removed if the same procedure is successfully invoked against them.

To date, no judge has ever been removed. The precise procedure to be followed for a judge's removal, and the consequences of that removal, are yet to be conclusively determined.